

106TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To promote competition in electricity markets and to provide
consumers with a reliable source of electricity, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Electricity Competition and Reliability Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—OPEN TRANSMISSION ACCESS

Sec. 101. Clarification of State authority regarding retail electric competition.

Sec. 102. Mandatory open access for all transmitting utilities.

Sec. 103. Authority to establish regional transmission organizations.

Sec. 104. Regional transmission planning agencies.

Sec. 105. Expansion of interstate transmission facilities.

Sec. 106. Relief of transmission constraints.

Sec. 107. Parity of franchise and other charges.

Sec. 108. Conforming amendments.

TITLE II—ELECTRIC RELIABILITY

Sec. 201. Electric reliability.

TITLE III—CONSUMER PROTECTION

Sec. 301. Electric supplier information disclosure.

Sec. 302. Consumer privacy.

Sec. 303. Electric supply unfair trade practices.

Sec. 304. Office of Consumer Counsel.

Sec. 305. Universal and affordable service.

Sec. 306. Definitions.

TITLE IV—MERGERS

Sec. 401. Electric company mergers and disposition of property.

Sec. 402. Elimination of review by the Nuclear Regulatory Commission.

TITLE V—PROMOTING COMPETITION

Subtitle A—Retail Reciprocity

Sec. 501. Retail reciprocity.

Sec. 502. Foreign commerce.

Subtitle B—Public Utility Holding Company Act of 1935

Sec. 511. Findings and purposes.

Sec. 512. Definitions.

Sec. 513. Repeal of the Public Utility Holding Company Act of 1935.

Sec. 514. Federal access to books and records.

Sec. 515. State access to books and records.

Sec. 516. Exemption authority.

Sec. 517. Affiliate transactions.

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- Sec. 518. Applicability.
- Sec. 519. Effect on other regulations.
- Sec. 520. Enforcement.
- Sec. 521. Savings provisions.
- Sec. 522. Implementation.
- Sec. 523. Transfer of resources.
- Sec. 524. Effective date.
- Sec. 525. Conforming amendment to the federal power act.

Subtitle C—Public Utility Regulatory Policies Act of 1978

- Sec. 531. Findings.
- Sec. 532. Prospective repeal.
- Sec. 533. Recovery of costs.
- Sec. 534. Definitions.

Subtitle D—Additional Provisions Promoting Competition

- Sec. 541. Aggregation.
- Sec. 542. Federal interconnection authorities.

TITLE VI—FEDERAL ELECTRIC UTILITIES

Subtitle A—Tennessee Valley Authority

[To be provided after consultations with Ed Bryant and other Members]

Subtitle B—Bonneville Power Administration

- Sec. 621. Definitions.
- Sec. 622. Regulation of Bonneville Transmission System.
- Sec. 623. Surcharge on transmission rates to recover otherwise nonrecoverable costs.
- Sec. 624. Limit on retail sales by Bonneville Power Administration.
- Sec. 625. Limitation on acquisition of new major generating resources.
- Sec. 626. Application of antitrust law.
- Sec. 627. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

- Sec. 631. Definitions.
- Sec. 632. Wholesale power sales by Federal power marketing administrations.
- Sec. 633. Regulation of Federal power marketing administration transmission systems.
- Sec. 634. Accounting.
- Sec. 635. Application of antitrust law.

TITLE VII—ENVIRONMENTAL PROVISIONS

- Sec. 701. Renewable energy production incentive.
- Sec. 702. Net metering.

TITLE VIII—PROVISIONS RELATING TO INTERNAL REVENUE CODE

- Sec. 801. Business activities of mutual or cooperative electric companies.
- Sec. 802. Tax-exempt bond financing of certain electric facilities.
- Sec. 803. Nuclear decommissioning costs.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. Study.

Sec. 902. State tax laws.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Electricity is generated, transmitted, dis-
4 tributed, and sold in interstate commerce and used
5 in virtually every home, commercial enterprise, and
6 manufacturing facility in the United States and sub-
7 stantially affects interstate commerce in other goods
8 and services.

9 (2) Americans consume electricity worth more
10 than \$250,000,000,000 a year, approximately half of
11 which is for residential purposes. The monthly elec-
12 tric utility bill is one of the largest expenses for most
13 households.

14 (3) Traditional monopoly rate-of-return regula-
15 tion of electricity has stifled competition, resulting in
16 high electricity rates for many consumers and few
17 incentives for technological innovation and good cus-
18 tomer service by electric utilities.

19 (4) Twenty-three States, representing over
20 163,000,000 people and over 60 percent of the pop-
21 ulation of the United States, have approved pro-
22 grams to foster retail choice in electric sales. State
23 laws forging the dramatic transition to competitive

1 retail electric markets have addressed stranded cost
2 recovery, public benefits, and other issues.

3 (5) High electricity rates are regressive, placing
4 a disproportionate burden on poor ratepayers. A
5 competitive electric generation industry will provide
6 benefits to all consumers by fostering fairness, inno-
7 vation, and efficiency, rather than allow cost shifting
8 that lowers rates to some consumers but raises rates
9 to others.

10 (6) The cost of electricity has a direct effect on
11 the price, profitability, and competitiveness of goods
12 and services produced in the United States.

13 (7) Lower priced electricity and improved reli-
14 ability can be realized by competition among electric
15 suppliers.

16 (8) The development of vigorous competition in
17 the retail market for electric energy will—

18 (A) reduce the costs of electric energy to
19 even the smallest consumers of electricity;

20 (B) create jobs as American businesses are
21 able to lower costs and better compete in world
22 markets and against foreign competition here at
23 home; and

24 (C) result in a more efficient utility indus-
25 try.

1 (9) Federal programs to benefit rural consum-
2 ers have succeeded, and rural America has been elec-
3 trified. However, rural America pays some of the
4 highest electric rates in the country. Competition
5 will assure reliable, reasonably priced rural electric
6 service.

7 (10) The Nation's interconnected electricity
8 generation, transmission, and local distribution sys-
9 tems critically affect the economy and productivity
10 of the United States, and the health, safety, welfare,
11 and security of all Americans.

12 (11) Congress has authority to enact laws,
13 under the Commerce Clause of the United States
14 Constitution, regarding the generation, transmission,
15 distribution, and sale of electric energy in interstate
16 commerce.

17 (12) The success of competition in the whole-
18 sale electric market under the Energy Policy Act of
19 1992 and open access under Orders No. 888 and
20 889 of the Federal Energy Regulatory Commission,
21 as well as innovations in electric generation and
22 transmission technologies, indicate that retail elec-
23 tric competition substantially benefits all classes of
24 United States electric consumers, including residen-
25 tial, commercial, industrial, and other consumers.

1 (b) PURPOSE.—The purpose of this Act is to benefit
2 American electric consumers through lower electric rates,
3 higher quality services, and a more robust United States
4 economy by encouraging retail and wholesale competition
5 in electric markets and to provide consumers with reliable
6 electric service, and for other purposes.

7 **TITLE I—OPEN TRANSMISSION**
8 **ACCESS**

9 **SEC. 101. CLARIFICATION OF STATE AUTHORITY REGARD-**
10 **ING RETAIL ELECTRIC COMPETITION.**

11 (a) STATE AUTHORITY TO ORDER RETAIL ELECTRIC
12 COMPETITION.—Section 201(b) of the Federal Power Act
13 is amended by adding the following new paragraph after
14 paragraph (2):

15 “(3) This Act shall not preempt or otherwise affect
16 the authority of a State or municipality to require retail
17 electric competition and unbundled transmission and local
18 distribution service for the delivery of electric energy di-
19 rectly to a retail electric consumer. If such unbundled
20 transmission is in interstate commerce, the rate, terms,
21 and conditions of the transmission shall be subject to the
22 exclusive jurisdiction of the Commission under this Part.”.

23 (b) STATE PUBLIC PURPOSE CHARGES.—Section
24 201(b) of the Federal Power Act is amended by adding
25 the following new paragraph after paragraph (3):

1 “(4) This Act shall not preempt or otherwise affect
2 the authority of a State or municipality to require as a
3 charge for delivery of electric energy to, or as a condition
4 for the purchase or receipt of electric energy by, any retail
5 electric consumer located in such State the payment of
6 any charge deemed necessary by such State or municipal-
7 ity for any purpose, including any of the following:

8 “(A) To recover transition costs.

9 “(B) To ensure that adequate electric service is
10 available to all retail electric consumers served by a
11 local distribution company.

12 “(C) To ensure and enhance the reliability of
13 retail electric service.

14 “(D) To fund assistance to low-income retail
15 electric consumers.

16 “(E) To encourage environmental, emerging en-
17 ergy technology, energy efficiency, or energy con-
18 servation programs, or any combination of such pro-
19 grams.

20 “(F) To provide for transition costs of electric
21 utility workers.

22 Nothing in this paragraph shall require a State or munici-
23 pality to impose any such charges.”.

24 (c) OPEN ACCESS TRANSMISSION AUTHORITY; RE-
25 TAIL WHEELING IN RETAIL COMPETITION STATES.—

1 (1) APPLICABILITY OF OPEN ACCESS TRANS-
2 MISSION RULES.—Section 206 of the Federal Power
3 Act is amended by adding the following new sub-
4 section after subsection (d):

5 “(e) OPEN ACCESS TRANSMISSION SERVICES.—
6 Under section 205 and this section, the Commission may
7 require, by rule or order, public utilities and transmitting
8 utilities to provide transmission services on a not unduly
9 discriminatory or preferential basis, subject to section
10 212(h), and may authorize recovery of stranded costs, as
11 defined by the Commission, arising from any requirement
12 to provide transmission services on such a basis. The Com-
13 mission shall waive the requirement to provide trans-
14 mission services on such a basis for any public utility that
15 owns, controls, or operates limited and discrete trans-
16 mission facilities that are not used for the transmission
17 of electric energy in interstate commerce. This subsection
18 applies to any rule or order promulgated by the Commis-
19 sion before, on, or after the date of enactment of this sub-
20 section.”.

21 (2) AUTHORITY TO ORDER RETAIL WHEEL-
22 ING.—Section 212(h) of the Federal Power Act is
23 amended as follows:

24 (A) By inserting “(1)” before “No”.

1 (B) By striking “(1)”, “(2)”, “(A)”, and
2 “(B)” and inserting in their places “(A)”,
3 “(B)”, “(i)”, and “(ii)” respectively.

4 (C) By striking from redesignated para-
5 graph (1)(B)(ii) “the date of enactment of this
6 subsection” and inserting “October 24, 1992,”.

7 (D) By adding the following new para-
8 graph at the end:

9 “(2) Notwithstanding paragraph (1), the Commission
10 may issue an order that requires the transmission of elec-
11 tric energy directly or indirectly to retail electric consum-
12 ers who are served by local distribution facilities that are
13 subject to open access.”.

14 (3) CONFORMING AMENDMENTS.—

15 (A) Section 3(24) of the Federal Power
16 Act is amended to read as follows:

17 “(24) ‘transmission services’ means the trans-
18 mission of electric energy sold or to be sold.”.

19 (B) Section 211(a) of the Federal Power
20 Act is amended by striking “for resale”.

21 (C) Section 212(a) of the Federal Power
22 Act is amended by striking “wholesale” each
23 time it appears, except the last time.

1 (D) Section 3 of the Federal Power Act is
2 amended by adding the following at the end
3 thereof:

4 “(26) LOCAL DISTRIBUTION COMPANY.—The
5 term ‘local distribution company’ means any entity
6 which owns, controls, or operates local distribution
7 facilities.

8 “(27) LOCAL DISTRIBUTION FACILITIES.—The
9 term ‘local distribution facilities’ means any facilities
10 used for the local distribution of electric energy.
11 Such term does not include any facilities determined
12 under section 201(h) to be transmission facilities.

13 “(28) OPEN ACCESS.—The term ‘open access’,
14 with respect to local distribution facilities, means
15 that the local distribution company that owns, con-
16 trols, or operates the facilities offers not unduly dis-
17 criminatory or preferential access to the facilities.

18 “(29) RETAIL ELECTRIC CONSUMER.—The
19 term ‘retail electric consumer’ means any person
20 who purchases electric energy for ultimate consump-
21 tion.

22 “(30) RETAIL ELECTRIC SUPPLIER.—The term
23 ‘retail electric supplier’ means any person who sells
24 electric energy to a retail electric consumer for ulti-
25 mate consumption.

1 “(31) STATE REGULATED ELECTRIC UTILITY.—

2 The term ‘State regulated electric utility’ means any
3 electric utility with respect to which a State commis-
4 sion has ratemaking authority.”.

5 (d) DETERMINATION OF TRANSMISSION FACILI-
6 TIES.—Section 201 of the Federal Power Act is amended
7 by adding the following new subsection at the end thereof:

8 “(h) DETERMINATION OF TRANSMISSION FACILI-
9 TIES.—

10 “(1) DETERMINATION.—A State commission, a
11 transmitting utility, or a local distribution company
12 may apply to the Commission for a determination
13 whether a particular facility used for the transpor-
14 tation of electric energy is a transmission facility
15 subject to the jurisdiction of the Commission. The
16 Commission may make such determination pursuant
17 to such a request or on its own motion.

18 “(2) COMMISSION FINDINGS.—The Commission
19 shall make a determination under paragraph (1) in
20 accordance with the following factors associated with
21 the facility:

22 “(A) Function and purpose.

23 “(B) Size.

24 “(C) Location.

1 “(D) Voltage level and other technical
2 characteristics.

3 “(E) Historic, current and planned usage
4 patterns.

5 “(F) Interconnection and coordination with
6 other facilities. and

7 “(G) Any other factor the Commission
8 deems relevant.

9 In making such determination, the Commission shall
10 give maximum practicable deference to any position
11 taken by the appropriate State commission.”.

12 **SEC. 102. MANDATORY OPEN ACCESS FOR ALL TRANSMIT-**
13 **TING UTILITIES.**

14 (a) DEFINITION OF PUBLIC UTILITY.—Section
15 201(e) of the Federal Power Act (16 U.S.C. 824(e)) is
16 amended to read as follows:

17 “(e) DEFINITION OF PUBLIC UTILITY.—(1) The
18 term ‘public utility’, when used in this Part and Part III,
19 means—

20 “(1) any person who owns or operates facilities
21 subject to the jurisdiction of the Commission under
22 this part (other than facilities subject to such juris-
23 diction solely by reason of section 210, 211, or 212);
24 and

1 “(2) any transmitting utility (other than the
2 Federal power marketing administrations, the Ten-
3 nessee Valley Authority, and ERCOT utilities as de-
4 fined in section 212(k)) that is not a public utility
5 within the meaning of paragraph (1), but only with
6 respect to determining, fixing, and otherwise regulat-
7 ing the rates, terms, and conditions for the trans-
8 mission of electric energy in interstate commerce.”.

9 (b) NONJURISDICTIONAL STATUS RESULTING FROM
10 COMPLIANCE WITH ORDERS UNDER SECTIONS 210 AND
11 211; LIMITATION.—Section 201(b)(2) of the Federal
12 Power Act (16 U.S.C. 824(b)(2)) is amended by striking
13 the period at the end of the second sentence and inserting
14 the following: “except with respect to determining, fixing,
15 and otherwise regulating the rates, terms, and conditions
16 for the transmission of electric energy under this part pur-
17 suant to subsection (e)(2).”.

18 (c) DEFINITION.—Section 3(23) of the Federal
19 Power Act (16 U.S.C. 796) is amended to read as follows:

20 “(23) TRANSMITTING UTILITY.—The term
21 ‘transmitting utility’ means any entity (including a
22 State or municipality) that owns or operates facili-
23 ties used for the transmission of electric energy.”.

24 (d) FOREIGN COMMERCE.—Section 201(c) of the
25 Federal Power Act (16 U.S.C. 824(c)) is amended by

1 striking “thereof:” and inserting “thereof (including con-
2 sumption in a foreign country),”.

3 **SEC. 103. AUTHORITY TO ESTABLISH REGIONAL TRANS-**
4 **MISSION ORGANIZATIONS.**

5 (a) IN GENERAL.—Section 202 of the Federal Power
6 Act is amended by adding the following new subsections
7 after subsection (g):

8 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

9 (1) Upon its own motion or upon application or complaint
10 and after notice and opportunity for a hearing, the Com-
11 mission may order the establishment of regional trans-
12 mission organizations for the purpose of independent oper-
13 ation, control, and planning of interconnected trans-
14 mission facilities; order a transmitting utility to relinquish
15 control over operation of its transmission facilities to a
16 regional transmission organization for the purpose of inde-
17 pendent operation, control, and planning of interconnected
18 transmission facilities; subject generators to the control of
19 such organization consistent with other laws to the extent
20 necessary to permit reliable operation of the transmission
21 facilities; or take any combination of these actions, if the
22 Commission finds that—

23 “(A) this action is necessary to promote com-
24 petitive electric markets and efficient, economical,
25 and reliable operation of the interstate transmission

1 system or to mitigate the market power of transmit-
2 ting utilities;

3 “(B) the regional transmission organization will
4 manage the transmission facilities in a manner that
5 assures that ownership of transmission facilities pro-
6 vides no advantage in electric markets;

7 “(C) the transmitting utility will receive just
8 and reasonable rates and charges for the use of its
9 facilities; and

10 “(D) adequate reliability of the affected trans-
11 mission facilities will be maintained.

12 Nothing in this subsection limits States from addressing
13 transmission facility maintenance, planning, siting, and
14 other utility functions in a manner consistent with this
15 Act or Commission action under this Act.

16 “(2) The Tennessee Valley Authority, the Bonneville
17 Power Administration, the Southwestern Power Adminis-
18 tration, or the Western Area Power Administration are
19 each authorized to participate in a regional transmission
20 organization after conducting a public process in the rel-
21 evant region to receive comments. Notwithstanding any
22 other law, participation may include delegation of oper-
23 ation and control of the transmission system concerned to
24 a regional transmission organization or other method of
25 participation, under terms and conditions the Tennessee

1 Valley Authority or the power marketing administration
2 concerned determines necessary or appropriate, including
3 being bound by operational and other orders of the re-
4 gional transmission organization and by the results of ar-
5 bitration of disputes with the organization or with other
6 participants.

7 “(3) Upon request by a regional transmission organi-
8 zation established for the purpose of independent oper-
9 ation, control, and planning of interconnected trans-
10 mission facilities or any other person, the Commission
11 shall issue a declaratory order determining whether such
12 organization covers a sufficiently broad geographic region
13 so as to ensure the development of efficient regional elec-
14 tricity markets that encourage regional efficiencies in both
15 generation dispatch and reliability of service.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall take effect three years after the date
18 of the enactment of this Act.

19 **SEC. 104. REGIONAL TRANSMISSION PLANNING AGENCIES.**

20 Part II of the Federal Power Act (16 U.S.C. 824 and
21 following) is amended by adding at the end the following
22 section:

1 **“SEC. 215. REGIONAL TRANSMISSION PLANNING AGENCIES.**

2 “(a) CONSENT.—The consent of Congress is given for
3 compacts among two or more States to establish regional
4 transmission planning agencies to—

5 “(1) facilitate coordination among the States
6 within a particular region with regard to the plan-
7 ning of future transmission facilities;

8 “(2) carry out State transmission facility siting
9 responsibilities more effectively;

10 “(3) meet the other requirements of this section
11 and rules prescribed by the Commission under this
12 section; and

13 “(4) otherwise be consistent with the public in-
14 terest.

15 “(b) AUTHORITY.—(1) If the Commission determines
16 that a compact meets the requirements of subsection (a),
17 the agency established under the compact has such au-
18 thority with respect to matters otherwise within the juris-
19 diction of the Commission as is expressly provided in the
20 compact and is necessary or appropriate for carrying out
21 the planning and siting responsibilities of the agency.

22 “(2) The Commission’s determination under this sec-
23 tion may be subject to any terms and conditions the Com-
24 mission determines are necessary or appropriate to ensure
25 that the compact is in the public interest.

1 “(c) RULES.—(1) The Commission shall prescribe by
2 rule—

3 “(A) criteria for determining whether a com-
4 pact is consistent with subsection (a); and

5 “(B) standards for its administration of a re-
6 gional transmission planning agency established
7 under the compact.

8 “(2) The rule shall require that—

9 “(A) a regional transmission planning agency
10 operate within a region that includes all or part of
11 each State that is a party to the compact;

12 “(B) a regional transmission planning agency
13 be composed of one or more members from each
14 State that is a party to the compact;

15 “(C) each participating State vest in the re-
16 gional transmission planning agency the authority to
17 carry out the compact and this section; and

18 “(D) the agency follow reasonable procedures in
19 making its decisions, in governing itself, and in car-
20 rying out its authorities under the compact.

21 “(3) The rule may include any other requirement to
22 ensure that the regional transmission planning agency’s
23 organization, practices, and procedures are sufficient to
24 carry out this section and the rules promulgated under
25 it.

1 “(d) TERMINATION.—The Commission, after notice
2 and opportunity for comment, may terminate the approval
3 of a compact under this section at any time if it deter-
4 mines that the regional transmission planning agency fails
5 to comply with the provisions of this section or Commis-
6 sion rules under subsection (c) or that the compact is con-
7 trary to the public interest.

8 “(e) APPLICATION OF SECTION 313.—Section 313
9 shall apply to rehearing before a regional transmission
10 planning agency and judicial review of any action of a re-
11 gional transmission planning agency in the same manner
12 as that section applies to rehearing and judicial review of
13 orders of the Commission.”.

14 **SEC. 105. EXPANSION OF INTERSTATE TRANSMISSION FA-**
15 **CILITIES.**

16 Part II of the Federal Power Act (16 U.S.C. 824 and
17 following) is amended by adding at the end the following
18 section:

19 **“SEC. 216. EXPANSION OF INTERSTATE TRANSMISSION FA-**
20 **CILITIES.**

21 “(a) COMMISSION AUTHORITY.—Whenever the Com-
22 mission, after notice and opportunity for hearing, finds
23 such action is in the public interest, it may order a trans-
24 mitting utility to enlarge, extend, or improve its facilities

1 for the transmission of electric energy in interstate com-
2 merce.

3 “(b) PROCEDURE.—The Commission may commence
4 a proceeding for the issuance of an order under subsection
5 (a) upon application or upon its own motion.

6 “(c) COMPLIANCE WITH OTHER LAWS.—Commis-
7 sion action under this section shall be subject to the Na-
8 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
9 and following) and all other applicable State and Federal
10 laws.

11 “(d) USE OF JOINT BOARDS.—Before issuing an
12 order under subsection (a), the Commission shall refer the
13 matter to a joint board appointed under section 209(a)
14 for advice and recommendations on the need for, design
15 of, and location of the proposed enlargement, extension,
16 or improvement. The Commission shall consider the advice
17 and recommendations of such board before ordering any
18 such enlargement, extension, or improvement.

19 “(e) LIMITATION ON AUTHORITY.—The Commission
20 shall have no authority to compel a transmitting utility
21 to extend or improve its transmission facilities if such en-
22 largement, extension, or improvement would unreasonably
23 impair the ability of the transmitting utility to provide
24 adequate service to its customers.”.

1 **SEC. 106. RELIEF OF TRANSMISSION CONSTRAINTS.**

2 Section 205 of the Federal Power Act is amended by
3 adding the following at the end thereof:

4 “(g) Not later than one year after the date of enact-
5 ment of this subsection, the Commission shall establish,
6 by rule, incentive rates for the removal by regional trans-
7 mission organizations approved by the Commission of sig-
8 nificant constraints on the transmission of electric energy
9 in interstate commerce. Such rule shall establish expedited
10 procedures for consideration of applications for incentive
11 rates by regional transmission organizations consistent
12 with this subsection.”.

13 **SEC. 107. PARITY OF FRANCHISE AND OTHER CHARGES.**

14 Part II of the Federal Power Act (16 U.S.C. 824 and
15 following) is amended by adding at the end the following
16 section:

17 **“SEC. 217. PARITY OF FRANCHISE AND OTHER CHARGES.**

18 “A State or local government, under State or local
19 law, may impose on or collect from a retail electric sup-
20 plier a franchise, license, permit fee, or equivalent thereof
21 as a condition for operating in the State or political sub-
22 division only to the extent that such fee is imposed on a
23 not unduly discriminatory or preferential basis.”.

24 **SEC. 108. CONFORMING AMENDMENTS.**

25 (a) ENFORCEMENT.—Subsections (a) and (b) of sec-
26 tion 316A of the Federal Power Act (16 U.S.C. 791a) are

1 each amended by striking “section 211, 212, 213, or
2 214,” in each place such phrase appears and inserting
3 “part II”.

4 (b) COMPLAINTS.—Section 306 of the Federal Power
5 Act is amended by inserting “agency or instrumentality
6 of the United States,” after “person,” in the first sen-
7 tence.

8 (c) REVIEW OF COMMISSION ORDERS.—Section 313
9 of the Federal Power Act is amended by inserting “agency
10 or instrumentality of the United States,” after “person,”
11 in the first sentence in subsection (a).

12 (d) TECHNICAL CORRECTIONS.—(1) Section 211(c)
13 of the Federal Power Act is amended by striking “(2)”
14 and by redesignating subparagraphs (A) and (B) as para-
15 graphs (1) and (2) and by striking “termination of modi-
16 fication” and inserting “termination or modification”.

17 (2) Section 315 of the Federal Power Act is amended
18 by striking “subsection” and inserting “section”.

19 **TITLE II—ELECTRIC** 20 **RELIABILITY**

21 **SEC. 201. ELECTRIC RELIABILITY.**

22 Part II of the Federal Power Act (16 U.S.C. 824 and
23 following) is amended by adding at the end the following
24 section:

1 **“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND**
2 **OVERSIGHT.**

3 “(a) DEFINITIONS.—As used in this section:

4 “(1) AFFILIATED REGIONAL RELIABILITY EN-
5 TITY.—The term ‘affiliated regional reliability entity’
6 means an entity delegated authority under the provi-
7 sions of subsection (h).

8 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
9 power system’ means all facilities and control sys-
10 tems necessary for operating an interconnected
11 transmission grid (or any portion thereof), including
12 high-voltage transmission lines, substations, control
13 centers, communications, data, and operations plan-
14 ning facilities, and the output of generating units
15 necessary to maintain transmission system reliabil-
16 ity.

17 “(3) ELECTRIC RELIABILITY ORGANIZATION.—
18 The term ‘electric reliability organization’ means the
19 organization approved by the Commission under
20 subsection (d)(4).

21 “(4) ENTITY RULE.—The term ‘entity rule’
22 means a rule adopted by an affiliated regional reli-
23 ability entity for a specific region and designed to
24 implement or enforce one or more organization
25 standards. An entity rule shall be approved by the

1 electric reliability organization and once approved,
2 shall be treated as an organization standard.

3 “(5) INDUSTRY SECTOR.—The term ‘industry
4 sector’ means a group of users of the bulk power
5 system with substantially similar commercial inter-
6 ests, as determined by the board of the electric reli-
7 ability organization.

8 “(6) INTERCONNECTION.—The term ‘inter-
9 connection’ means a geographic area in which the
10 operation of bulk-power system components is syn-
11 chronized such that the failure of one or more of
12 such components may adversely effect the ability of
13 the operators of other components within the inter-
14 connection to maintain safe and reliable operation of
15 the facilities within their control.

16 “(7) ORGANIZATION STANDARD.—The term ‘or-
17 ganization standard’ means a policy or standard
18 duly adopted by the electric reliability organization
19 to provide for the reliable operation of a bulk power
20 system.

21 “(8) PUBLIC INTEREST GROUP.—The term
22 ‘public interest group’ means any nonprofit private
23 or public organization that has an interest in the ac-
24 tivities of the electric reliability organization, includ-
25 ing, but not limited to, ratepayer advocates, environ-

1 mental groups, and State and local government or-
2 ganizations that regulate market participants and
3 promulgate government policy.

4 “(9) SYSTEM OPERATOR.—The term ‘system
5 operator’ means any entity that operates or is re-
6 sponsible for the operation of a bulk-power system,
7 including a control area operator, an independent
8 system operator, a transmission company, a trans-
9 mission system operator, or a regional security coor-
10 dinator.

11 “(10) USER OF THE BULK-POWER SYSTEM.—
12 The term ‘user of the bulk-power system’ means any
13 entity that sells, purchases, or transmits electric en-
14 ergy over a bulk-power system, or that owns, oper-
15 ates or maintains facilities or control systems that
16 are part of a bulk-power system, or that is a system
17 operator.

18 “(11) VARIANCE.—The term ‘variance’ means
19 an exception or variance from the requirements of
20 an organization standard (including a proposal for
21 an organization standard where there is no organiza-
22 tion standard) that is adopted by an affiliated re-
23 gional reliability entity and applicable to all or a
24 part of the region for which the affiliated regional
25 reliability entity is responsible. A variance shall be

1 approved by the electric reliability organization and
2 once approved, shall be treated as an organization
3 standard.

4 “(b) COMMISSION AUTHORITY.—(1) Within the
5 United States, the Commission shall have jurisdiction over
6 the electric reliability organization, all affiliated regional
7 reliability entities, all system operators, and all users of
8 the bulk-power system, for purposes of approving and en-
9 forcing compliance with the requirements of this section.

10 “(2) The Commission may, by rule, define any other
11 term used in this section, provided such definition is con-
12 sistent with the definitions in, and the purpose and intent
13 of, this Act.

14 “(c) EXISTING RELIABILITY STANDARDS.—Follow-
15 ing enactment of this section, and prior to the approval
16 of the electric reliability organization under subsection (d),
17 any person, including the North American Electric Reli-
18 ability Council and its member regional reliability councils,
19 may file any reliability standard, guidance or practice that
20 they would propose to be made mandatory and enforce-
21 able. The Commission, after allowing interested persons
22 an opportunity to submit comments, may approve any
23 such proposed mandatory standard, guidance or practice,
24 or any amendment thereto, if it finds that the standard,
25 guidance, or practice, or amendment is just, reasonable,

1 not unduly discriminatory or preferential, and in the pub-
2 lic interest. The Commission may, without further pro-
3 ceeding or finding, grant its approval to any standard,
4 guidance or practice for which no substantive objections
5 are filed in the comment period. Filed standards, guid-
6 ances, or practices, including any amendments thereto,
7 shall be mandatory and applicable according to their terms
8 following approval by the Commission and shall remain
9 in effect until (1) withdrawn, disapproved or superseded
10 by an organization standard, issued or approved by the
11 electric reliability organization and made effective by the
12 Commission under subsection (e); or (2) disapproved or
13 suspended by the Commission if, upon complaint or upon
14 its own motion and after notice and opportunity for com-
15 ment, the Commission finds the standard, guidance or
16 practice unjust, unreasonable, unduly discriminatory or
17 preferential, or not in the public interest. Standards, guid-
18 ances or practices in effect pursuant to the provisions of
19 this subsection shall be enforceable by the Commission.

20 “(d) ORGANIZATION APPROVAL.—(1) Not later than
21 90 days after the date of enactment of this section, the
22 Commission shall issue proposed rules specifying proce-
23 dures and requirements for an entity to apply for approval
24 as the electric reliability organization. The Commission
25 shall provide notice and opportunity for comment on the

1 proposed rules. The Commission shall promulgate a final
2 rule under this subsection within 180 days after the date
3 of enactment of this section.

4 “(2) Following the issuance of a final Commission
5 rule under paragraph (1), an entity may submit an appli-
6 cation to the Commission for approval as the electric reli-
7 ability organization. The applicant shall specify in its ap-
8 plication its governance and procedures, as well as its
9 funding mechanism and initial funding requirements.

10 “(3) The Commission shall provide public notice of
11 the application and afford interested parties an oppor-
12 tunity to comment.

13 “(4) The Commission shall approve the application
14 if the Commission determines that the applicant—

15 “(A) has the ability to develop, implement and
16 enforce standards that provide for an adequate level
17 of reliability of the bulk-power system;

18 “(B) permits voluntary membership to any user
19 of the bulk-power system or public interest group;

20 “(C) assures fair representation of its members
21 in the selection of its directors and fair management
22 of its affairs, taking into account the need for effi-
23 ciency and effectiveness in decisionmaking and oper-
24 ations and the requirements for technical com-
25 petency in the development of organization stand-

1 ards and the exercise of oversight of bulk-power sys-
2 tem reliability;

3 “(D) assures that no two industry sectors have
4 the ability to control, and no one industry sector has
5 the ability to veto, the electric reliability organiza-
6 tion’s discharge of its responsibilities (including ac-
7 tions by committees recommending standards to the
8 board or other board actions to implement and en-
9 force standards);

10 “(E) provides for governance by a board wholly
11 comprised of independent directors;

12 “(F) provides a funding mechanism and re-
13 quirements that are just, reasonable and not unduly
14 discriminatory or preferential and are in the public
15 interest, and which satisfies the requirements of sub-
16 section (l);

17 “(G) establishes procedures for development of
18 organization standards that provide reasonable no-
19 tice and opportunity for public comment, taking into
20 account the need for efficiency and effectiveness in
21 decisionmaking and operations and the requirements
22 for technical competency in the development of orga-
23 nization standards, and which standards develop-
24 ment process has the following attributes:

25 “(i) openness,

1 “(ii) balance of interests, and

2 “(iii) due process, except that the proce-
3 dures may include alternative procedures for
4 emergencies;

5 “(H) establishes fair and impartial procedures
6 for implementation and enforcement of organization
7 standards, either directly or through delegation to
8 an affiliated regional reliability entity, including the
9 imposition of penalties, limitations on activities,
10 functions, or operations, or other appropriate sanc-
11 tions;

12 “(I) establishes procedures for notice and op-
13 portunity for public observation of all meetings, ex-
14 cept that the procedures for public observation may
15 include alternative procedures for emergencies or for
16 the discussion of information the directors determine
17 should take place in closed session, such as litiga-
18 tion, personnel actions, or commercially sensitive in-
19 formation;

20 “(J) provides for the consideration of rec-
21 ommendations of States and State commissions, and

22 “(K) addresses other matters that the Commis-
23 sion may deem necessary or appropriate to ensure
24 that the procedures, governance, and funding of the
25 electric reliability organization are just, reasonable,

1 not unduly discriminatory or preferential, and are in
2 the public interest.

3 “(5) The Commission shall approve only one electric
4 reliability organization. If the Commission receives two or
5 more timely applications that satisfy the requirements of
6 this subsection, the Commission shall approve only the ap-
7 plication it concludes will best implement the provisions
8 of this section.

9 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
10 ORGANIZATION STANDARDS.—(1) The electric reliability
11 organization shall file with the Commission any new or
12 modified organization standards, including any variances
13 or entity rules, and the Commission shall follow the proce-
14 dures under paragraph (2) for review of that filing.

15 “(2) Submissions under paragraph (1) shall include:

16 “(A) a concise statement of the purpose of the
17 proposal, and

18 “(B) a record of any proceedings conducted
19 with respect to such proposal.

20 The Commission shall provide notice of the filing of such
21 proposal and afford interested persons 30 days to submit
22 comments. The Commission, after taking into consider-
23 ation any submitted comments, shall approve or dis-
24 approve such proposal not later than 60 days after the
25 deadline for the submission of comments, except that the

1 Commission may extend the 60-day period for an addi-
2 tional 90 days for good cause, and except further that if
3 the Commission does not act to approve or disapprove a
4 proposal within the foregoing periods the proposal shall
5 go into effect subject to its terms, without prejudice to
6 the authority of the Commission thereafter to suspend or
7 modify the proposal in accordance with the standards and
8 requirements of this section. Proposals approved by the
9 Commission shall take effect according to their terms but
10 not earlier than 30 days after the effective date of the
11 Commission's order, except as provided in paragraph (3)
12 of this subsection.

13 “(3)(A) In the exercise of its review responsibilities
14 under this subsection, the Commission shall give due
15 weight to the technical expertise of the electric reliability
16 organization with respect to the content of a new or modi-
17 fied organization standard, but shall not defer to the orga-
18 nization with respect to the effect of the organization
19 standard on competition. The Commission shall approve
20 a proposed new or modified organization standard if it de-
21 termines the proposal to be just, reasonable, not unduly
22 discriminatory or preferential, and in the public interest.
23 The Commission, either upon complaint or upon its own
24 motion, shall suspend an existing organization standard,
25 if it determines the standard to be unjust, unreasonable,

1 unduly discriminatory or preferential or not in the public
2 interest.

3 “(B) An existing or proposed organization standard
4 which is disapproved or suspended in whole or in part by
5 the Commission shall be remanded to the electric reliabil-
6 ity organization for further consideration.

7 “(C) The Commission, on its own motion or upon
8 complaint, may direct the electric reliability organization
9 to develop an organization standard, including modifica-
10 tion to an existing organization standard, addressing a
11 specific matter by a date certain if the Commission consid-
12 ers such new or modified organization standard necessary
13 or appropriate to further the purposes of this section. The
14 electric reliability organization shall file any such new or
15 modified organization standard in accordance with this
16 subsection.

17 “(D) An affiliated regional reliability entity may pro-
18 pose a variance or entity rule under subsection (h)(3) to
19 the electric reliability organization. The affiliated regional
20 reliability entity may request that the electric reliability
21 organization expedite consideration of the proposal, and
22 may file a notice of such request with the Commission,
23 if expedited consideration is necessary to provide for bulk-
24 power system reliability. If the electric reliability organiza-
25 tion fails to adopt the variance or entity rule, either in

1 whole or in part, the affiliated regional reliability entity
2 may request that the Commission review such action. If
3 the Commission determines, after its review of such a re-
4 quest, that the action of the electric reliability organiza-
5 tion did not conform to the applicable standards and pro-
6 cedures approved by the Commission, or if the Commis-
7 sion determines that the variance or entity rule is just,
8 reasonable, not unduly discriminatory or preferential, and
9 in the public interest, and that the electric reliability orga-
10 nization has unreasonably rejected the proposed variance
11 or entity rule, then the Commission may remand the pro-
12 posed variance or entity rule for further consideration by
13 the electric reliability organization or may direct the elec-
14 tric reliability organization or the affiliated regional reli-
15 ability entity to develop a variance or entity rule consistent
16 with that requested by the affiliated regional reliability en-
17 tity. Any such variance or entity rule proposed by an affili-
18 ated regional reliability entity shall be submitted to the
19 electric reliability organization for review and filing with
20 the Commission in accordance with the procedures speci-
21 fied in this subsection.

22 “(E) Notwithstanding any other provision of this sub-
23 section, a proposed organization standard or amendment
24 shall take effect according to its terms if the electric reli-
25 ability organization determines that an emergency exists

1 requiring that such proposed organization standard or
2 amendment take effect without notice or comment. The
3 electric reliability organization shall notify the Commission
4 immediately following such determination and shall file
5 such emergency organization standard or amendment with
6 the Commission not later than five days following such
7 determination and shall include in such filing an expla-
8 nation of the need for such emergency standard. Subse-
9 quently, the Commission shall provide notice of the organi-
10 zation standard or amendment for comment, and shall fol-
11 low the procedures set out in paragraphs (2) and (3) for
12 review of the new or modified organization standard. Any
13 such emergency organization standard that has gone into
14 effect shall remain in effect unless and until suspended
15 or disapproved by the Commission. If the Commission de-
16 termines at any time that the emergency organization
17 standard or amendment is not necessary, the Commission
18 may suspend such emergency organization standard or
19 amendment.

20 “(4) All users of the bulk-power system shall comply
21 with any organization standard that takes effect under
22 this section.

23 “(f) COORDINATION WITH CANADA AND MEXICO.—
24 The electric reliability organization shall take all appro-
25 priate steps to gain recognition in Canada and Mexico.

1 The United States shall use its best efforts to enter into
2 international agreements with the appropriate govern-
3 ments of Canada and Mexico to provide for effective com-
4 pliance with organization standards and to provide for the
5 effectiveness of the electric reliability organization in car-
6 rying out its mission and responsibilities. All actions taken
7 by the electric reliability organization, any affiliated re-
8 gional reliability entity, and the Commission shall be con-
9 sistent with the provisions of such international agree-
10 ments.

11 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
12 FUNDING.—(1) The electric reliability organization shall
13 file with the Commission any proposed change in its proce-
14 dures, governance, or funding, or any changes in the affili-
15 ated regional reliability entity’s procedures, governance or
16 funding relating to delegated functions, and shall include
17 with the filing an explanation of the basis and purpose
18 for the change.

19 “(2) A proposed procedural change may take effect
20 90 days after filing with the Commission if the change
21 constitutes a statement of policy, practice, or interpreta-
22 tion with respect to the meaning or enforcement of an ex-
23 isting procedure. Otherwise, a proposed procedural change
24 shall take effect only upon a finding by the Commission,
25 after notice and opportunity for comments, that the

1 change is just, reasonable, not unduly discriminatory or
2 preferential, is in the public interest, and satisfies the re-
3 quirements of subsection (d)(4).

4 “(3) A change in governance or funding shall not
5 take effect unless the Commission finds that the change
6 is just, reasonable, not unduly discriminatory or pref-
7 erential, and is in the public interest, and satisfies the re-
8 quirements of subsection (d)(4).

9 “(4)(A) The Commission, either upon complaint or
10 upon its own motion, may suspend a procedure or govern-
11 ance or funding provision if it determines the procedure
12 or provision does not meet the requirements of subsection
13 (d)(4) or is unjust, unreasonable, unduly discriminatory
14 or preferential, or otherwise not in the public interest.

15 “(B) The Commission, upon complaint or upon its
16 own motion, may require the electric reliability organiza-
17 tion to amend the procedures, governance or funding if
18 the Commission determines that the amendment is nec-
19 essary to meet the requirements of this section. The elec-
20 tric reliability organization shall file the amendment in ac-
21 cordance with paragraph (1) of this subsection.

22 “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-
23 tric reliability organization shall, upon request by an en-
24 tity, enter into an agreement with such entity for the dele-
25 gation of authority to implement and enforce compliance

1 with organization standards in a specified geographic area
2 if the electric reliability organization finds that the entity
3 requesting the delegation satisfies the requirements of
4 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and
5 if the delegation promotes the effective and efficient imple-
6 mentation and administration of bulk-power system reli-
7 ability. The electric reliability organization may enter into
8 an agreement to delegate to the entity any other authority,
9 except that the electric reliability organization shall re-
10 serve the right to set and approve standards for bulk-
11 power system reliability.

12 “(2) The electric reliability organization shall file
13 with the Commission any agreement entered into under
14 this subsection and any information the Commission re-
15 quires with respect to the affiliated regional reliability en-
16 tity to which authority is to be delegated. The Commission
17 shall approve the agreement, following public notice and
18 opportunity for comment, if it finds that the agreement
19 meets the requirements of paragraph (1), and is just, rea-
20 sonable, not unduly discriminatory or preferential, and is
21 in the public interest. A proposed delegation agreement
22 with an affiliated regional reliability entity organized on
23 an interconnection-wide basis shall be rebuttably pre-
24 sumed by the Commission to promote the effective and
25 efficient implementation and administration of bulk-power

1 system reliability. No delegation by the electric reliability
2 organization shall be valid unless approved by the Com-
3 mission.

4 “(3)(A) A delegation agreement entered into under
5 this subsection shall specify the procedures for an affili-
6 ated regional reliability entity to propose entity rules or
7 variances for review by the electric reliability organization.
8 With respect to any such proposal that would apply on
9 an interconnection-wide basis, the electric reliability orga-
10 nization shall presume such proposal valid if made by an
11 interconnection-wide affiliated regional reliability entity
12 unless the electric reliability organization makes a written
13 finding that the proposal—

14 “(i) was not developed in a fair and open proc-
15 ess that provided an opportunity for all interested
16 parties to participate;

17 “(ii) has a significant adverse impact on reli-
18 ability or interstate commerce in other interconnec-
19 tions;

20 “(iii) fails to provide a level of bulk-power sys-
21 tem reliability within the interconnection such that
22 it would constitute a serious and substantial threat
23 to public health, safety, welfare, or national security;
24 or

1 “(iv) creates a serious and substantial burden
2 on competitive markets within the interconnection
3 that is not necessary for reliability.

4 “(B) With respect to any such proposal that would
5 apply only to part of an interconnection, the electric reli-
6 ability organization shall find such proposal valid if the
7 affiliated regional reliability entity or entities making the
8 proposal demonstrate that it—

9 “(i) was developed in a fair and open process
10 that provided an opportunity for all interested par-
11 ties to participate;

12 “(ii) would not have an adverse impact on
13 interstate commerce that is not necessary for reli-
14 ability;

15 “(iii) provides a level of bulk-power system reli-
16 ability adequate to protect public health, safety, wel-
17 fare, and national security, and would not have a
18 significant adverse impact on reliability; and

19 “(iv) in the case of a variance, is based on le-
20 gitimate differences between regions or between sub-
21 regions within the affiliated regional reliability enti-
22 ty’s geographic area.

23 The electric reliability organization shall approve or dis-
24 approve such proposal within 120 days, or the proposal
25 shall be deemed approved. Following approval of any such

1 proposal under this paragraph, the electric reliability orga-
2 nization shall seek Commission approval pursuant to the
3 procedures prescribed under subsection (e)(3). Affiliated
4 regional reliability entities may not make requests for ap-
5 proval directly to the Commission except pursuant to sub-
6 section (e)(3)(D).

7 “(4) If an affiliated regional reliability entity re-
8 quests, consistent with paragraph (1) of this subsection,
9 that the electric reliability organization delegate authority
10 to it, but is unable within 180 days to reach agreement
11 with the electric reliability organization with respect to
12 such requested delegation, such entity may seek relief
13 from the Commission. If, following notice and opportunity
14 for comment, the Commission determines that a delega-
15 tion to the entity would meet the requirements of sub-
16 section (1) above, and that the delegation would be just,
17 reasonable, not unduly discriminatory or preferential, and
18 in the public interest, and that the electric reliability orga-
19 nization has unreasonably withheld such delegation, the
20 Commission may, by order, direct the electric reliability
21 organization to make such delegation.

22 “(5)(A) The Commission may, upon its own motion
23 or upon complaint, and with notice to the appropriate af-
24 filiated regional reliability entity or entities, direct the
25 electric reliability organization to propose a modification

1 to an agreement entered into under this subsection if the
2 Commission determines that—

3 “(i) the affiliated regional reliability entity no
4 longer has the capacity to carry out effectively or ef-
5 ficiently its implementation or enforcement respon-
6 sibilities under that agreement, has failed to meet its
7 obligations under that agreement, or has violated
8 any provision of this section,

9 “(ii) the rules, practices, or procedures of the
10 affiliated regional reliability entity no longer provide
11 for fair and impartial discharge of its implementa-
12 tion or enforcement responsibilities under the agree-
13 ment,

14 “(iii) the geographic boundary of a regional
15 transmission organization approved by the Commis-
16 sion is not wholly within the boundary of an affili-
17 ated regional reliability entity and such difference is
18 inconsistent with the effective and efficient imple-
19 mentation and administration of bulk-power system
20 reliability, or

21 “(iv) the agreement is inconsistent with another
22 delegation agreement as a result of actions taken
23 under paragraph (4) of this subsection.

24 “(B) Following an order of the Commission issued
25 under subparagraph (A), the Commission may suspend

1 the affected agreement if the electric reliability organiza-
2 tion or the affiliated regional reliability entity does not
3 propose an appropriate and timely modification. If the
4 agreement is suspended, the electric reliability organiza-
5 tion shall assume the previously delegated responsibilities.
6 The Commission shall allow the electric reliability organi-
7 zation and the affiliated regional reliability entity an op-
8 portunity to appeal the suspension.

9 “(i) ORGANIZATION MEMBERSHIP.—Every system
10 operator shall be required to be a member of the electric
11 reliability organization and shall be required also to be a
12 member of any affiliated regional reliability entity operat-
13 ing under an agreement effective pursuant to subsection
14 (h) applicable to the region in which the system operator
15 operates or is responsible for the operation of bulk-power
16 system facilities.

17 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
18 Consistent with the range of actions approved by the Com-
19 mission under subsection (d)(4)(H), the electric reliability
20 organization may impose a penalty, limitation of activities,
21 functions, or operations, or other disciplinary action the
22 electric reliability organization finds appropriate against
23 a user of the bulk-power system if the electric reliability
24 organization, after notice and opportunity for interested
25 parties to be heard, issues a finding in writing that the

1 user of the bulk-power system has violated an organization
2 standard. The electric reliability organization shall imme-
3 diately notify the Commission of any disciplinary action
4 imposed with respect to an act or failure to act of a user
5 of the bulk-power system that affected or threatened to
6 affect bulk-power system facilities located in the United
7 States, and the sanctioned party shall have the right to
8 seek modification or rescission of such disciplinary action
9 by the Commission. If the electric reliability organization
10 finds it necessary to prevent a serious threat to reliability,
11 the organization may seek injunctive relief in the United
12 States district court for the district in which the affected
13 facilities are located.

14 “(2) A disciplinary action taken under paragraph (1)
15 may take effect no earlier than 30 days after the electric
16 reliability organization files with the Commission its writ-
17 ten finding and record of proceedings before the electric
18 reliability organization and the Commission posts its writ-
19 ten finding, unless the Commission, on its own motion or
20 upon application by the user of the bulk-power system
21 which is the subject of the action, suspends the action.
22 The action shall remain in effect or remain suspended
23 until the Commission, after notice and opportunity for
24 hearing, affirms, sets aside, modifies, or reinstates the ac-
25 tion, but the Commission shall conduct such hearing under

1 procedures established to ensure expedited consideration
2 of the action taken.

3 “(3) The Commission, on its own motion, may order
4 compliance with an organization standard and may impose
5 a penalty, limitation of activities, functions, or operations,
6 or take such other disciplinary action as the Commission
7 finds appropriate, against a user of the bulk-power system
8 with respect to actions affecting or threatening to affect
9 bulk-power system facilities located in the United States
10 if the Commission finds, after notice and opportunity for
11 a hearing, that the user of the bulk-power system has vio-
12 lated or threatens to violate an organization standard.

13 “(4) The Commission may take such action as is nec-
14 essary against the electric reliability organization or an af-
15 filiated regional reliability entity to assure compliance with
16 an organization standard, or any Commission order affect-
17 ing the electric reliability organization or an affiliated re-
18 gional reliability entity.

19 “(k) RELIABILITY REPORTS.—The electric reliability
20 organization shall conduct periodic assessments of the reli-
21 ability and adequacy of the interconnected bulk-power sys-
22 tem in North America and shall report annually to the
23 Secretary of Energy and the Commission its findings and
24 recommendations for monitoring or improving system reli-
25 ability and adequacy.

1 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
2 COSTS.—The reasonable costs of the electric reliability or-
3 ganization, and the reasonable costs of each affiliated re-
4 gional reliability entity that are related to implementation
5 and enforcement of organization standards or other re-
6 quirements contained in a delegation agreement approved
7 under subsection (h), shall be assessed by the electric reli-
8 ability organization and each affiliated regional reliability
9 entity, respectively, taking into account the relationship of
10 costs to each region and based on an allocation that re-
11 flects an equitable sharing of the costs among all end-
12 users. The Commission shall provide by rule for the review
13 of such costs and allocations, pursuant to the standards
14 in this subsection and subsection (d)(4)(F).

15 (m) APPLICATION OF ANTITRUST LAWS.—

16 “(1) IN GENERAL.—To the extent undertaken
17 to develop or implement an organization standard,
18 each of the following activities shall not, in any ac-
19 tion under the antitrust laws, be deemed illegal per
20 se:

21 “(A) Activities undertaken by the electric
22 reliability organization under this section or af-
23 filiated regional reliability entity operating
24 under an agreement in effect under subsection
25 (h).

1 “(B) Activities of a member of the electric
2 reliability organization or affiliated regional re-
3 liability entity in pursuit of organization objec-
4 tives under this section undertaken in good
5 faith under the rules of the organization.

6 Primary jurisdiction, and immunities and other af-
7 firmative defenses, shall be available to the extent
8 otherwise applicable.

9 “(2) RULE OF REASON.—In any action under
10 the antitrust laws, an activity described in para-
11 graph (1) shall be judged on the basis of its reason-
12 ableness, taking into account all relevant factors af-
13 fecting competition.

14 “(3) DEFINITION.—For purposes of this sub-
15 section, the term ‘antitrust laws’ has the meaning
16 given such term in subsection (a) of the first section
17 of the Clayton Act (15 U.S.C. 12(a)), except that
18 such term includes section 5 of the Federal Trade
19 Commission Act (15 U.S.C. 45) to the extent that
20 such section 5 applies to unfair methods of competi-
21 tion.”.

1 **TITLE III—CONSUMER**
2 **PROTECTION**

3 **SEC. 301. ELECTRIC SUPPLIER INFORMATION DISCLOSURE.**

4 (a) DISCLOSURE RULES.—Not later than January 1,
5 2001, the Federal Trade Commission shall promulgate
6 rules prescribing the form, placement, content, and timing
7 of the disclosure required under subsections (b) and (c)
8 of this section. Such rules shall be promulgated in accord-
9 ance with section 553 of title 5 of the United States Code,
10 after consultation with the Federal Energy Regulatory
11 Commission, the Secretary of Energy, and the Adminis-
12 trator of the Environmental Protection Agency.

13 (b) DISCLOSURE TO RETAIL ELECTRIC CONSUM-
14 ERS.—In order to assist retail electric consumers in mak-
15 ing informed purchasing decisions, any retail electric sup-
16 plier that sells or makes an offer to sell electric energy,
17 or solicits retail electric consumers to purchase electric en-
18 ergy, shall provide the retail electric consumers, in accord-
19 ance with rules promulgated under subsection (a), a state-
20 ment containing the following information:

21 (1)(A) The nature of the service being offered,
22 including information about interruptibility of serv-
23 ice.

24 (B) The price of electric energy, including a de-
25 scription of any variable charges.

1 (C) A description of all other charges that are
2 associated with the service being offered including,
3 but not limited to, access charges, exit charges,
4 back-up service charges, stranded cost recovery
5 charges, and customer service charges.

6 (D) Information concerning the product or
7 price that the Federal Trade Commission determines
8 is technologically and economically feasible to pro-
9 vide and is of assistance to retail electric consumers
10 in making purchasing decisions.

11 (2)(A) The share of electric energy that is gen-
12 erated by each type of energy generation resource.

13 (B) Information concerning generation emis-
14 sions characteristics that the Federal Trade Com-
15 mission determines is technologically and economi-
16 cally feasible to provide and is of assistance to retail
17 electric consumers in making purchasing decisions.

18 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In
19 every sale of electric energy for resale, the seller shall pro-
20 vide to the purchaser such information respecting genera-
21 tion source and emissions characteristics as may be re-
22 quired by rules under subsection (a).

23 (d) FEDERAL TRADE COMMISSION ENFORCE-
24 MENT.—Violation of a rule promulgated under this section
25 shall be treated as a violation of a rule under section 18

1 of the Federal Trade Commission Act (15 U.S.C. 57a).
2 All functions and powers of the Federal Trade Commis-
3 sion under such Act are available to the Federal Trade
4 Commission to enforce compliance with this section not-
5 withstanding any jurisdictional limitations in such Act.

6 (e) STATE AUTHORITY.—(1) This section does not
7 preclude a State or State commission from prescribing and
8 enforcing additional laws, regulations, or procedures re-
9 garding the practices which are the subject of this section,
10 so long as such laws, regulations, or procedures are not
11 inconsistent with the provisions of this section or with any
12 rule prescribed by the Federal Trade Commission pursu-
13 ant to it.

14 (2) The remedies provided by this section are in addi-
15 tion to any other remedies available by law.

16 **SEC. 302. CONSUMER PRIVACY.**

17 (a) PROHIBITION.—The Federal Trade Commission
18 shall promulgate rules prohibiting any person who obtains
19 consumer information in connection with the sale or deliv-
20 ery of electric energy to a retail electric consumer from
21 using, disclosing, or permitting access to such information
22 unless the consumer to whom such information relates—

23 (1) is provided an opportunity to object to the
24 use of the information, disclosure of the information,

1 or permitting of access to the information (as the
2 case may be); and

3 (2) does not so object, or withdraws any such
4 objection.

5 Such rules shall be promulgated in accordance with sec-
6 tion 553 of title 5 of the United States Code.

7 (b) PERMITTED USE.—The rules under subsection
8 (a) shall not prohibit any person from using, disclosing,
9 or permitting access to consumer information referred to
10 in subsection (a) for any of the following purposes:

11 (1) To initiate, render, bill, or collect for the
12 sale or delivery of electric energy to retail electric
13 consumers or for related services.

14 (2) To protect the rights or property of the per-
15 son obtaining such information.

16 (3) To protect retail electric consumers from
17 fraud, abuse, and unlawful subscription in the sale
18 or delivery of electric energy to such consumers.

19 (4) For law enforcement purposes.

20 (5) For purposes of compliance with any Fed-
21 eral, State, or local law or regulation authorizing
22 disclosure of information to a Federal, State, or
23 local agency.

24 (c) DISCLOSURE ON REQUEST BY CONSUMERS.—The
25 rules under subsection (a) shall permit any person, upon

1 the affirmative written request of a retail electric con-
2 sumer, to disclose consumer information relating to the
3 consumer to any person designated by the consumer.

4 (d) AGGREGATE CONSUMER INFORMATION.—The
5 rules under subsection (a) shall permit any person to use,
6 disclose, and permit access to aggregate consumer infor-
7 mation and shall require local distribution companies to
8 make such information available to retail electric suppliers
9 upon request and payment of a reasonable fee.

10 (e) FEDERAL TRADE COMMISSION ENFORCEMENT.—
11 Violation of a rule promulgated under this section shall
12 be treated as a violation of a rule under section 18 of the
13 Federal Trade Commission Act (15 U.S.C. 57a). All func-
14 tions and powers of the Federal Trade Commission under
15 such Act are available to the Federal Trade Commission
16 to enforce compliance with this section notwithstanding
17 any jurisdictional limitations in such Act.

18 (f) STATE AUTHORITY.—(1) This section does not
19 preclude a State or State commission from prescribing and
20 enforcing additional laws, regulations, or procedures re-
21 garding the practices which are the subject of this section,
22 so long as such laws, regulations, or procedures are not
23 inconsistent with the provisions of this section or with any
24 rule prescribed by the Federal Trade Commission pursu-
25 ant to it.

1 (2) The remedies provided by this section are in addi-
2 tion to any other remedies available by law.

3 (g) DEFINITIONS.—As used in this section:

4 (1) AGGREGATE CONSUMER INFORMATION.—
5 The term “aggregate consumer information” means
6 collective data that relates to a group or category of
7 retail electric consumers, from which individual con-
8 sumer identities and characteristics have been re-
9 moved.

10 (2) CONSUMER INFORMATION.—The term “con-
11 sumer information” means information that relates
12 to the quantity, technical configuration, type, des-
13 tination, or amount of use of electric energy deliv-
14 ered to any retail electric consumer.

15 **SEC. 303. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

16 (a) SLAMMING.—(1) The Federal Trade Commission
17 shall promulgate rules in accordance with section 553 of
18 title 5 of the United States Code for the submittal and
19 verification of a retail electric consumer’s selection or
20 change in selection of a retail electric supplier and for the
21 assessment of penalties for violation of these rules.

22 (2) A person shall not submit or change the selection
23 made by a retail electric consumer except in accordance
24 with procedures established in paragraph (1).

1 (b) CRAMMING.—(1) The Federal Trade Commission
2 shall promulgate rules in accordance with section 553 of
3 title 5 of the United States Code for obtaining the consent
4 of a retail electric consumer for purchase of goods and
5 services other than those expressly authorized by law or
6 any agreement for the purchase of electric energy or relat-
7 ed services entered into by the electric consumer and for
8 the assessment of penalties for violation of these rules.

9 (2) A person shall not charge a retail electric con-
10 sumer for a particular good or service except in accordance
11 with procedures established in paragraph (1).

12 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
13 Violation of a rule promulgated under this section shall
14 be treated as a violation of a rule under section 18 of the
15 Federal Trade Commission Act (15 U.S.C. 57a). All func-
16 tions and powers of the Federal Trade Commission under
17 such Act are available to the Federal Trade Commission
18 to enforce compliance with this section notwithstanding
19 any jurisdictional limitations in such Act.

20 (d) STATE AUTHORITY.—(1) This section does not
21 preclude a State or State commission from prescribing and
22 enforcing additional laws, regulations, or procedures re-
23 garding the practices which are the subject of this section,
24 so long as such laws, regulations, or procedures are not
25 inconsistent with the provisions of this section or with any

1 rule prescribed by the Federal Trade Commission pursu-
2 ant to it.

3 (2) The remedies provided by this section are in addi-
4 tion to any other remedies available by law.

5 **SEC. 304. OFFICE OF CONSUMER COUNSEL.**

6 Part III of the of the Federal Power Act (16 U.S.C.
7 825 and following) is amended by inserting after section
8 319 the following section:

9 **“SEC. 319A. OFFICE OF CONSUMER COUNSEL.**

10 “(a) IN GENERAL.—There shall be an office in the
11 Commission to be known as the Office of Consumer Coun-
12 sel (in this section referred to as the ‘Office’). The Office
13 shall be headed by an official to be known as the Con-
14 sumer Counsel, who shall be appointed by the President.
15 The Consumer Counsel shall be responsible for the dis-
16 charge of the functions and duties of the Office.

17 “(b) FUNCTIONS AND DUTIES.—The Consumer
18 Counsel shall represent retail electric consumers in pro-
19 ceedings before the Commission that may affect wholesale
20 or retail electric service, prices, or practices. The Con-
21 sumer Counsel may intervene in any proceeding under this
22 Act.”.

23 **SEC. 305. UNIVERSAL AND AFFORDABLE SERVICE.**

24 It is the sense of the Congress that—

1 (1) every retail electric consumer should have
2 access to electric energy at reasonable and afford-
3 able rates; and

4 (2) the States should ensure that retail electric
5 competition does not result in the loss of service to
6 rural, residential, or low-income consumers.

7 **SEC. 306. DEFINITIONS.**

8 For purposes of this title, each of the terms “local
9 distribution company”, “retail electric consumer”, “retail
10 electric supplier”, and “State commission” has the mean-
11 ing given such term in section 3 of the Federal Power Act.

12 **TITLE IV—MERGERS**

13 **SEC. 401. ELECTRIC COMPANY MERGERS AND DISPOSITION**
14 **OF PROPERTY.**

15 (a) IN GENERAL.—Section 203 of the Federal Power
16 Act (16 U.S.C. 824b(a)) is amended as follows:

17 (1) Subsection (a) is amended as follows:

18 (A) By striking “public utility” each place
19 it appears and inserting “electric utility”.

20 (B) In the first sentence, by striking
21 “\$50,000” and all that follows through “with-
22 out first having” and inserting “\$50,000 with-
23 out first having”.

24 (C) In the last sentence—

1 (i) by striking “hearing” and inserting
2 “oral or written presentation of views”;
3 and

4 (ii) by striking “disposition, consolida-
5 tion, acquisition, or control” and inserting
6 “disposition”.

7 (D) By adding at the end the following:
8 “Notwithstanding sections 201(b)(1) and
9 201(f), generation facilities shall be subject to
10 the jurisdiction of the Commission for purposes
11 of this section.”.

12 (2) The heading for the section is amended by
13 striking “PROPERTY;” and all that follows and in-
14 serting “PROPERTY”.

15 (b) DEFINITION OF ELECTRIC UTILITY.—Section
16 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is
17 amended by striking “, but does not include any” and in-
18 serting “and each”.

19 **SEC. 402. ELIMINATION OF REVIEW BY THE NUCLEAR REG-**
20 **ULATORY COMMISSION.**

21 Section 105 of the Atomic Energy Act of 1954 (42
22 U.S.C. 2135) is amended by adding the following after
23 subsection c.:

24 “d. Following the date of enactment of this sub-
25 section, subsection 105 c. shall not apply to any pending

1 or future application filed for a license to construct or op-
2 erate a utilization or production facility under sections
3 103 or 104 b. This subsection shall not affect the Commis-
4 sion's authority to enforce conditions included in licenses
5 issued under sections 103 or 104 b. before the date of
6 enactment of this subsection.”.

7 **TITLE V—PROMOTING** 8 **COMPETITION**

9 **Subtitle A—Retail Reciprocity**

10 **SEC. 501. RETAIL RECIPROCITY.**

11 (a) IN GENERAL.—Part II of the Federal Power Act
12 (16 U.S.C. 824 and following) is amended by adding at
13 the end the following section:

14 **“SEC. 219. RETAIL RECIPROCITY.**

15 “A retail electric supplier shall not sell electric energy
16 to any retail electric consumer through local distribution
17 facilities owned, controlled, or operated by another entity
18 unless all local distribution facilities owned, controlled, or
19 operated by the retail electric supplier, or any affiliate
20 thereof, are subject to open access. In the case of local
21 distribution facilities that are owned, controlled, or oper-
22 ated by a State regulated electric utility and that are not
23 subject to open access, such local distribution facilities
24 shall, for purposes of the preceding sentence, be deemed
25 to be subject to open access if the State regulated electric

1 utility has filed with the State commission a plan to pro-
2 vide open access to such facilities.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect one year after the date of
5 the enactment of this Act.

6 **SEC. 502. FOREIGN COMMERCE.**

7 Part II of the Federal Power Act (16 U.S.C. 824 and
8 following) is amended by adding at the end the following
9 section:

10 **“SEC. 220. FOREIGN COMMERCE.**

11 “A retail electric supplier located in a foreign nation
12 which has ratified the North American Free Trade Agree-
13 ment shall not sell electric energy to any retail electric con-
14 sumer in the United States through local distribution fa-
15 cilities owned, controlled, or operated by a local distribu-
16 tion company in the United States unless all local distribu-
17 tion facilities owned, controlled, or operated in such for-
18 eign nation by such supplier, or any affiliate thereof, are
19 subject to open access.

20 **Subtitle B—Public Utility Holding**
21 **Company Act of 1935**

22 **SEC. 511. FINDINGS AND PURPOSES.**

23 (a) **FINDINGS.**—The Congress finds that—

24 (1) the Public Utility Holding Company Act of
25 1935 was intended to facilitate the work of Federal

1 and State regulators by placing certain constraints
2 on the activities of holding company systems;

3 (2) developments since 1935, including changes
4 in other regulation and in the electric and gas indus-
5 tries, have called into question the continued rel-
6 evance of the model of regulation established by that
7 Act;

8 (3) there is a continuing need for limited Fed-
9 eral and State regulation in order to ensure the rate
10 protection of utility customers; and

11 (4) limited Federal regulation is necessary to
12 supplement the work of State commissions for the
13 continued rate protection of electric and gas utility
14 customers.

15 (b) PURPOSES.—The purposes of this subtitle are—

16 (1) to eliminate unnecessary regulation, yet
17 continue to provide for consumer protection by facili-
18 tating existing rate regulatory authority through im-
19 proved Federal and State commission access to
20 books and records of all companies in a holding com-
21 pany system, to the extent that such information is
22 relevant to rates paid by utility customers, while af-
23 fording companies the flexibility required to compete
24 in the energy markets; and

1 (2) to address protection of electric and gas
2 utility customers by providing for Federal and State
3 access to books and records of all companies in a
4 holding company system that are relevant to utility
5 rates.

6 **SEC. 512. DEFINITIONS.**

7 For purposes of this subtitle—

8 (1) the term “affiliate” of a company means
9 any company 5 percent or more of the outstanding
10 voting securities of which are owned, controlled, or
11 held with power to vote, directly or indirectly, by
12 such company;

13 (2) the term “associate company” of a company
14 means any company in the same holding company
15 system with such company;

16 (3) the term “Commission” means the Federal
17 Energy Regulatory Commission;

18 (4) the term “company” means a corporation,
19 partnership, association, joint stock company, busi-
20 ness trust, or any organized group of persons,
21 whether incorporated or not, or a receiver, trustee,
22 or other liquidating agent of any of the foregoing;

23 (5) the term “electric utility company” means
24 any company that owns or operates facilities used

1 for the generation, transmission, or distribution of
2 electric energy for sale;

3 (6) the terms “exempt wholesale generator”
4 and “foreign utility company” have the same mean-
5 ings as in sections 32 and 33, respectively, of the
6 Public Utility Holding Company Act of 1935, as
7 those sections existed on the day before the effective
8 date of this subtitle;

9 (7) the term “gas utility company” means any
10 company that owns or operates facilities used for
11 distribution at retail (other than the distribution
12 only in enclosed portable containers or distribution
13 to tenants or employees of the company operating
14 such facilities for their own use and not for resale)
15 of natural or manufactured gas for heat, light, or
16 power;

17 (8) the term “holding company” means—

18 (A) any company that directly or indirectly
19 owns, controls, or holds, with power to vote, 10
20 percent or more of the outstanding voting secu-
21 rities of a public utility company or of a holding
22 company of any public utility company; and

23 (B) any person, determined by the Com-
24 mission, after notice and opportunity for hear-
25 ing, to exercise directly or indirectly (either

1 alone or pursuant to an arrangement or under-
2 standing with one or more persons) such a con-
3 trolling influence over the management or poli-
4 cies of any public utility company or holding
5 company as to make it necessary or appropriate
6 for the protection of utility customers with re-
7 spect to rates that such person be subject to
8 the obligations, duties, and liabilities imposed
9 by this subtitle upon holding companies;

10 (9) the term “holding company system” means
11 a holding company, together with its subsidiary com-
12 panies;

13 (10) the term “jurisdictional rates” means
14 rates established by the Commission for the trans-
15 mission of electric energy in interstate commerce,
16 the sale of electric energy at wholesale in interstate
17 commerce, the transportation of natural gas in inter-
18 state commerce, and the sale in interstate commerce
19 of natural gas for resale for ultimate public con-
20 sumption for domestic, commercial, industrial, or
21 any other use;

22 (11) the term “natural gas company” means a
23 person engaged in the transportation of natural gas
24 in interstate commerce or the sale of such gas in
25 interstate commerce for resale;

1 (12) the term “person” means an individual or
2 company;

3 (13) the term “public utility” means any person
4 who owns or operates facilities used for transmission
5 of electric energy in interstate commerce or sales of
6 electric energy at wholesale in interstate commerce;

7 (14) the term “public utility company” means
8 an electric utility company or a gas utility company;

9 (15) the term “State commission” means any
10 commission, board, agency, or officer, by whatever
11 name designated, of a State, municipality, or other
12 political subdivision of a State that, under the laws
13 of such State, has jurisdiction to regulate public util-
14 ity companies; and

15 (16) the term “subsidiary company” of a hold-
16 ing company means—

17 (A) any company, 10 percent or more of
18 the outstanding voting securities of which are
19 directly or indirectly owned, controlled, or held
20 with power to vote, by such holding company;
21 and

22 (B) any person, the management or poli-
23 cies of which the Commission, after notice and
24 opportunity for hearing, determines to be sub-
25 ject to a controlling influence, directly or indi-

1 rectly, by such holding company (either alone or
2 pursuant to an arrangement or understanding
3 with one or more other persons) so as to make
4 it necessary for the rate protection of utility
5 customers with respect to rates that such per-
6 son be subject to the obligations, duties, and li-
7 abilities imposed by this subtitle upon subsidi-
8 ary companies of holding companies.

9 **SEC. 513. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
10 **PANY ACT OF 1935.**

11 The Public Utility Holding Company Act of 1935 (15
12 U.S.C. 79a and following) is repealed, effective 12 months
13 after the date of enactment of this Act.

14 **SEC. 514. FEDERAL ACCESS TO BOOKS AND RECORDS.**

15 (a) IN GENERAL.—Each holding company and each
16 associate company thereof shall maintain, and shall make
17 available to the Commission, such books, accounts, memo-
18 randa, and other records as the Commission deems to be
19 relevant to costs incurred by a public utility or natural
20 gas company that is an associate company of such holding
21 company and necessary or appropriate for the protection
22 of utility customers with respect to jurisdictional rates.

23 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
24 ing company or of any subsidiary company of a holding
25 company shall maintain, and make available to the Com-

1 mission, such books, accounts, memoranda, and other
2 records with respect to any transaction with another affili-
3 ate, as the Commission deems to be relevant to costs in-
4 curred by a public utility or natural gas company that is
5 an associate company of such holding company and nec-
6 essary or appropriate for the protection of utility cus-
7 tomers with respect to jurisdictional rates.

8 (c) HOLDING COMPANY SYSTEMS.—The Commission
9 may examine the books, accounts, memoranda, and other
10 records of any company in a holding company system, or
11 any affiliate thereof, as the Commission deems to be rel-
12 evant to costs incurred by a public utility or natural gas
13 company within such holding company system and nec-
14 essary or appropriate for the protection of utility cus-
15 tomers with respect to jurisdictional rates.

16 (d) CONFIDENTIALITY.—No member, officer, or em-
17 ployee of the Commission shall divulge any fact or infor-
18 mation that may come to his or her knowledge during the
19 course of examination of books, accounts, memoranda, or
20 other records as provided in this section, except as may
21 be directed by the Commission or by a court of competent
22 jurisdiction.

23 **SEC. 515. STATE ACCESS TO BOOKS AND RECORDS.**

24 (a) IN GENERAL.—Upon the written request of a
25 State commission having jurisdiction to regulate a public

1 utility company in a holding company system, and subject
2 to such terms and conditions as may be necessary and ap-
3 propriate to safeguard against unwarranted disclosure to
4 the public of any trade secrets or sensitive commercial in-
5 formation, a holding company or its associate company or
6 affiliate thereof, wherever located, shall produce for in-
7 spection books, accounts, memoranda, and other records
8 that—

9 (1) have been identified in reasonable detail in
10 a proceeding before the State commission;

11 (2) the State commission deems are relevant to
12 costs incurred by such public utility company; and

13 (3) are necessary for the effective discharge of
14 the responsibilities of the State commission with re-
15 spect to such proceeding.

16 (b) EFFECT ON STATE LAW.—Nothing in this section
17 shall preempt applicable State law concerning the provi-
18 sion of books, accounts, memoranda, or other records, or
19 in any way limit the rights of any State to obtain books,
20 accounts, memoranda, or other records under Federal law,
21 contract, or otherwise.

22 (c) COURT JURISDICTION.—Any United States dis-
23 trict court located in the State in which the State commis-
24 sion referred to in subsection (a) is located shall have ju-
25 risdiction to enforce compliance with this section.

1 **SEC. 516. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the
3 date of enactment of this Act, the Commission shall pro-
4 mulgate a final rule to exempt from the requirements of
5 section 514 any person that is a holding company, solely
6 with respect to one or more—

7 (1) qualifying facilities under the Public Utility
8 Regulatory Policies Act of 1978;

9 (2) exempt wholesale generators; or

10 (3) foreign utility companies.

11 (b) OTHER AUTHORITY.—If, upon application or
12 upon its own motion, the Commission finds that the books,
13 accounts, memoranda, and other records of any person are
14 not relevant to the jurisdictional rates of a public utility
15 company, or if the Commission finds that any class of
16 transactions is not relevant to the jurisdictional rates of
17 a public utility company, the Commission shall exempt
18 such person or transaction from the requirements of sec-
19 tion 514.

20 **SEC. 517. AFFILIATE TRANSACTIONS.**

21 Nothing in this subtitle shall preclude the Commis-
22 sion or a State commission from exercising its jurisdiction
23 under otherwise applicable law to determine whether a
24 public utility company may recover in rates any costs of
25 an activity performed by an associate company, or any

1 costs of goods or services acquired by such public utility
2 company from an associate company.

3 **SEC. 518. APPLICABILITY.**

4 No provision of this subtitle shall apply to, or be
5 deemed to include—

6 (1) the United States;

7 (2) a State or any political subdivision of a
8 State;

9 (3) any foreign governmental authority not op-
10 erating in the United States;

11 (4) any agency, authority, or instrumentality of
12 any entity referred to in paragraph (1), (2), or (3);
13 or

14 (5) any officer, agent, or employee of any entity
15 referred to in paragraph (1), (2), or (3) acting as
16 such in the course of his or her official duty.

17 **SEC. 519. EFFECT ON OTHER REGULATIONS.**

18 Nothing in this subtitle precludes the Commission or
19 a State commission from exercising its jurisdiction under
20 otherwise applicable law to protect utility customers.

21 **SEC. 520. ENFORCEMENT.**

22 The Commission shall have the same powers as set
23 forth in sections 306 through 317 of the Federal Power
24 Act (16 U.S.C. 825e–825p) to enforce the provisions of
25 this subtitle.

1 **SEC. 521. SAVINGS PROVISIONS.**

2 (a) IN GENERAL.—Nothing in this subtitle prohibits
3 a person from engaging in or continuing to engage in ac-
4 tivities or transactions in which it is legally engaged or
5 authorized to engage on the date of enactment of this Act
6 , if that person continues to comply with the terms of any
7 such authorization, whether by rule or by order.

8 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
9 Nothing in this subtitle limits the authority of the Com-
10 mission under the Federal Power Act (16 U.S.C. 791a and
11 following) (including section 301 of that Act) or the Natu-
12 ral Gas Act (15 U.S.C. 717 and following) (including sec-
13 tion 8 of that Act).

14 **SEC. 522. IMPLEMENTATION.**

15 Not later than 12 months after the date of enactment
16 of this Act, the Commission shall—

17 (1) promulgate such regulations as may be nec-
18 essary or appropriate to implement this subtitle; and

19 (2) submit to the Congress detailed rec-
20 ommendations on technical and conforming amend-
21 ments to Federal law necessary to carry out this
22 subtitle and the amendments made by this subtitle.

23 **SEC. 523. TRANSFER OF RESOURCES.**

24 All books and records that relate primarily to the
25 functions transferred to the Commission under this sub-

1 title shall be transferred from the Securities and Exchange
2 Commission to the Commission.

3 **SEC. 524. EFFECTIVE DATE.**

4 This subtitle shall take effect 12 months after the
5 date of enactment of this Act.

6 **SEC. 525. CONFORMING AMENDMENT TO THE FEDERAL**
7 **POWER ACT.**

8 Section 318 of the Federal Power Act (16 U.S.C.
9 825q) is repealed.

10 **Subtitle C—Public Utility**
11 **Regulatory Policies Act of 1978**

12 **SEC. 531. FINDINGS.**

13 The Congress finds that—

14 (1) implementation of section 210 of the Public
15 Utility Regulatory Policies Act of 1978 (16 U.S.C.
16 824a–3) resulted in many consumers paying exces-
17 sive rates for electricity;

18 (2) the Energy Policy Act of 1992 gives non-
19 regulated producers of electricity additional access to
20 the wholesale electric market through transmission
21 access and exemption from the Public Utility Hold-
22 ing Company Act of 1935; and

23 (3) in light of the competitive wholesale electric
24 marketplace brought about by the Energy Policy Act

1 of 1992, section 210 of the Public Utility Regulatory
2 Policies Act of 1978 need no longer exist.

3 **SEC. 532. PROSPECTIVE REPEAL.**

4 (a) NEW CONTRACTS.—After the date of enactment
5 of this Act, no electric utility shall be required to enter
6 into a new contract or obligation to purchase or to sell
7 electric energy or capacity pursuant to section 210 of the
8 Public Utility Regulatory Policies Act of 1978.

9 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
10 FECTED.—Nothing in this section affects the rights or
11 remedies of any party with respect to the purchase or sale
12 of electric energy or capacity from or to a facility deter-
13 mined to be a qualifying small power production facility
14 or a qualifying cogeneration facility under section 210 of
15 the Public Utility Regulatory Policies Act of 1978 pursu-
16 ant to any contract or obligation to purchase or to sell
17 electric energy or capacity in effect on January 6, 1999,
18 including the right to recover the costs of purchasing such
19 electric energy or capacity.

20 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
21 ing in this subtitle may be deemed or construed as imply-
22 ing congressional ratification of any interpretation of, or
23 any action taken pursuant to, the Public Utility Regu-
24 latory Policies Act of 1978.

1 **SEC. 533. RECOVERY OF COSTS.**

2 In order to assure recovery by electric utilities pur-
3 chasing electric energy or capacity from a qualifying facil-
4 ity pursuant to any legally enforceable obligation entered
5 into or imposed pursuant to section 210 of the Public Util-
6 ity Regulatory Policies Act of 1978 prior to the date of
7 enactment of this Act of all costs associated with such pur-
8 chases, the Commission shall promulgate and enforce such
9 regulations as may be required to assure that no utility
10 shall be required directly or indirectly to absorb the costs
11 associated with such purchases from a qualifying facility.
12 Such regulations shall be treated as a rule enforceable
13 under the Federal Power Act (16 U.S.C. 791a–825r).

14 **SEC. 534. DEFINITIONS.**

15 For purposes of this subtitle—

16 (1) the term “Commission” means the Federal
17 Energy Regulatory Commission;

18 (2) the term “electric utility” means any per-
19 son, State agency, or Federal agency, which sells
20 electric energy;

21 (3) the term “qualifying small power production
22 facility” has the same meaning as provided in sec-
23 tion 3(17)(C) of the Federal Power Act;

24 (4) the term “qualifying cogeneration facility”
25 has the same meaning as provided in section
26 3(18)(A) of the Federal Power Act; and

1 (5) the term “qualifying facility” means either
2 a small power production facility or a qualifying co-
3 generation facility.

4 **Subtitle D—Additional Provisions**
5 **Promoting Competition**

6 **SEC. 541. AGGREGATION.**

7 Part II of the Federal Power Act (16 U.S.C. 824 and
8 following) is amended by adding at the end the following
9 section:

10 **“SEC. 221. PURCHASE OF ELECTRIC ENERGY BY RETAIL**
11 **ELECTRIC CONSUMERS.**

12 “Notwithstanding any other provision of Federal or
13 State law, and subject to not unduly discriminatory or
14 preferential State requirements imposed on retail electric
15 suppliers, a group of retail electric consumers or any en-
16 tity acting on behalf of such group may acquire retail elec-
17 tric energy on an aggregate basis if the group is served
18 by one or more local distribution companies all of whose
19 local distribution facilities are subject to open access.”.

20 **SEC. 542. FEDERAL INTERCONNECTION AUTHORITIES.**

21 (a) INTERCONNECTIONS FOR CERTAIN FACILI-
22 TIES.—Section 210 of the Federal Power Act is amended
23 by adding the following at the end thereof:

24 “(f) SPECIAL RULE FOR CERTAIN FACILITIES.—

1 “(1) DEFINITION.—As used in this subsection
2 the term ‘facility’ means—

3 “(A) a small-scale electric power genera-
4 tion facility that is designed to serve retail elec-
5 tric consumers at or near the facility, or

6 “(B) a facility using a single fuel source to
7 produce at the point of use either electric en-
8 ergy or mechanical power and thermal energy.

9 “(2) INTERCONNECTION.—A local distribution
10 company shall allow a facility to interconnect with
11 the local distribution facilities of such company if
12 the facility owner is a retail electric consumer pro-
13 vided local distribution service by such company and
14 such owner complies with the final rule promulgated
15 under paragraph (3).

16 “(3) RULES.—Within one year from the date of
17 enactment of this subsection, the Commission shall
18 promulgate a final rule to implement paragraph (2)
19 and issue related safety and power quality stand-
20 ards. To the extent feasible, the Commission shall
21 develop the standards through a process involving
22 interested parties.”.

23 (b) AMENDMENTS TO EXISTING INTERCONNECTION
24 AUTHORITIES.—Section 210 of the Federal Power Act is
25 amended as follows:

1 (1) In section 210(a)(1) (16 U.S.C.
2 824i(a)(1))—

3 (A) by inserting “transmitting utility,”
4 after “electric utility,”;

5 (B) by inserting “any transmitting utility,”
6 after “small power production facility,” in sub-
7 paragraph (A); and

8 (C) by inserting “or distribution” after
9 “transmission” in subparagraph (D).

10 (2) In section 210(b)(2) (16 U.S.C. 824i(b)(2))
11 by striking “an evidentiary hearing” and inserting
12 “a hearing”.

13 (3) In section 210(d) by deleting the last sen-
14 tence.

15 **TITLE VI—FEDERAL ELECTRIC**
16 **UTILITIES**
17 **Subtitle A—Tennessee Valley**
18 **Authority**

19 *[To be provided after consultations with Ed Bryant and*
20 *other Members]*

21 **Subtitle B—Bonneville Power**
22 **Administration**

23 **SEC. 621. DEFINITIONS.**

24 As used in this subtitle:

1 (1) The term ‘Bonneville Administrator’ means
2 the Administrator of the Bonneville Power Adminis-
3 tration.

4 (2) The term ‘Bonneville Transmission System’
5 means transmission facilities owned or leased by the
6 United States and operated by the Bonneville Power
7 Administration or by another entity under section
8 202(h) of the Federal Power Act.

9 (3) The terms “Commission”, “electric utility”,
10 “retail electric consumer”, and “transmitting util-
11 ity” have the same meanings as provided by section
12 3 of the Federal Power Act (16 U.S.C. 796).

13 (4) The term “major resource” has the mean-
14 ing given such term in section 3(12) of the Pacific
15 Northwest Electric Power Planning and Conserva-
16 tion Act.

17 (5) The term ‘Pacific Northwest’ has the mean-
18 ing given that term in section 3(14) of the Pacific
19 Northwest Electric Power Planning and Conserva-
20 tion Act (16 U.S.C. 839a(14)).

21 **SEC. 622. REGULATION OF BONNEVILLE TRANSMISSION**
22 **SYSTEM.**

23 (a) IN GENERAL.—After September 30, 2001, not-
24 withstanding section 201(f) of the Federal Power Act, sec-
25 tions 202(h), 203 (with respect to dispositions of trans-

1 mission facilities), 205, 206, 208, and 210 through 213
2 and sections 301 through 304, 306, 307 (except the last
3 sentence of paragraph (c)), 308, 309, 313, and 317 of the
4 Federal Power Act apply to the Bonneville Transmission
5 System and transmission of electric energy and provision
6 of necessary associated services over the Bonneville Trans-
7 mission System.

8 (b) ADDITIONAL RULES.—Subsection (a) shall be
9 subject to—

10 (1) phasing in changes in transmission rates or
11 charges (including but not limited to direct assign-
12 ment of transmission facility costs) that would cause
13 unreasonable cost shifts among users of the Bonne-
14 ville Transmission System if implemented at once;

15 (2) mitigating unreasonable adverse impacts on
16 transmission customers in the Pacific Northwest
17 that would otherwise result from changes in the his-
18 toric treatment of costs to acquire transmission to
19 serve customers historically served by General
20 Transfer Agreements entered into between the Bon-
21 neville Administrator and other transmitting utili-
22 ties;

23 (3) assuring the Bonneville Power Administra-
24 tion's transmission rates and charges are established
25 sufficient to—

1 (A) recover Federal investment in the Bon-
2 neville Transmission System over a reasonable
3 period of years after first meeting all the Bon-
4 neville Power Administration's other trans-
5 mission costs and expenses; and

6 (B) produce the revenues necessary to as-
7 sure timely payment of all transmission related
8 costs and expenses;

9 provided that this paragraph shall not be construed
10 to require any particular methodology for setting
11 transmission rates;

12 (4) rules established by the Commission to—

13 (A) assure transmission access is provided
14 over the Bonneville Transmission System for
15 hydroelectric power that must be generated and
16 transmitted at a particular time in order to re-
17 duce levels of dissolved nitrogen gas harmful to
18 fish, with such access to be provided in a man-
19 ner that displaces other generation using the
20 Bonneville Transmission System but does not
21 impair service to loads, require operations that
22 may damage generation facilities, or alter com-
23 mercial relationships between the electric utility
24 whose generation was displaced and its cus-
25 tomer; and

1 (B) provide methods for compensation be-
2 tween or among the hydroelectric power mar-
3 keter and the party or parties affected by the
4 displacement of transmission customers in those
5 circumstances; and

6 (5) section 623 of this Act (relating to sur-
7 charge on transmission rates to recover otherwise
8 nonrecoverable costs).

9 (c) APPLICABILITY.—Subsection (a) shall not apply
10 to—

11 (1) the Bonneville Power Administration's ac-
12 tivities other than transmission of electric energy
13 and provision of necessary associated services over
14 the Bonneville Transmission System; or

15 (2) a contract in effect on the date of enact-
16 ment of this Act, except for rates which are adjust-
17 able by the Bonneville Administrator under the con-
18 tract; a treaty of the United States; or a contract
19 concerning the delivery of electric energy and capac-
20 ity entered into by entities designated pursuant to
21 such a treaty.

22 (d) PRIORITY OF PAYMENTS.—Nothing in this sec-
23 tion shall alter or be construed to alter the priority of pay-
24 ments established in section 13(b) of the Federal Colum-
25 bia River Transmission System Act (16 U.S.C. 838k(b))

1 or the requirements of section 11 that Act (16 U.S.C.
2 838i).

3 (e) COSTS AND REVENUES.—Costs and revenues
4 shall be allocated to the Bonneville Transmission System
5 in accordance with rules to be promulgated by the Com-
6 mission.

7 **SEC. 623. SURCHARGE ON TRANSMISSION RATES TO RE-**
8 **COVER OTHERWISE NONRECOVERABLE**
9 **COSTS.**

10 (a) SURCHARGE AUTHORITY.—Subject to the re-
11 quirements of subsections (b) and (f) and notwithstanding
12 section 201(f) of the Federal Power Act, the Bonneville
13 Administrator shall propose and the Commission shall, by
14 accepting or modifying the Bonneville Administrator's
15 proposal or substituting an alternate, establish a mecha-
16 nism that enables the Administrator to place a surcharge
17 on rates or charges for transmission services over the Bon-
18 neville Transmission System when necessary in order to
19 recover power costs unable to be recovered through power
20 revenues in time to meet the cost recovery requirements
21 of section 7(a)(1) of the Pacific Northwest Electric Power
22 Planning and Conservation Act (16 U.S.C. 839e(a)(1)).

23 (b) REQUIREMENTS.—The transmission surcharge
24 mechanism set forth in subsection (a) shall—

1 (1) recover not more than \$600,000,000 in
2 total and no more than \$100,000,000 in any fiscal
3 year;

4 (2) be available only between October 1, 2001,
5 and October 1, 2016;

6 (3) be implemented by the Bonneville Adminis-
7 trator only when the Administrator projects that
8 available financial reserves in the Bonneville Power
9 Administration Fund attributable to the power func-
10 tion will fall below \$150,000,000; and

11 (4) to the fullest extent possible, be designed
12 and established to recover the costs from trans-
13 mission users in a manner that—

14 (A) minimizes any effect on transmission
15 customers' choices among competing electric
16 utilities;

17 (B) does not apply to use of the Bonneville
18 Transmission System for sales of electric energy
19 outside the Pacific Northwest; and

20 (C) minimizes bypass of the Bonneville
21 Transmission System by transmission cus-
22 tomers seeking to avoid the surcharge.

23 (c) IMPLEMENTATION.—The Bonneville Adminis-
24 trator shall have sole discretion to implement the cost re-
25 covery mechanism established by the Commission under

1 subsection (a). Before imposing the surcharge, the Bonne-
2 ville Administrator shall—

3 (1) make available information concerning the
4 need for and amount of the surcharge, and conduct
5 a public process in the Pacific Northwest to receive
6 comments on implementation of the surcharge; and

7 (2) afford the Pacific Northwest Electric Power
8 and Conservation Planning Council 30 days to make
9 recommendations to the Bonneville Administrator
10 concerning cost management options that could re-
11 duce or avoid the need to implement the surcharge.

12 If, after taking into consideration the comments and rec-
13 ommendations and ensuring that reasonable and prudent
14 alternatives to implementation of the surcharge have been
15 undertaken, the Bonneville Administrator decides to im-
16 plement a surcharge, it shall take effect on the Bonneville
17 Administrator's proposed effective date, but no earlier
18 than 60 days following the Administrator's filing of the
19 proposed surcharge to the Commission for approval.

20 (d) COMMISSION REVIEW.—Within 120 days after
21 the effective date of the surcharge, the Commission shall
22 accept, reject, or modify implementation of the surcharge
23 and communicate its decision to the Bonneville Adminis-
24 trator. If the Commission rejects or modifies the sur-
25 charge, the Commission may order the Bonneville Power

1 Administration to refund, with interest, the portion of the
2 surcharge the Commission found not justified or the Com-
3 mission may authorize the Bonneville Power Administra-
4 tion to recover amounts from customers who underpaid
5 or did not pay the surcharge. If the Commission orders
6 modification of the surcharge, such modified charge shall
7 be effective on the date and for the time period specified
8 by the Commission.

9 (e) REPAYMENT.—Any amounts recovered through
10 application of the transmission surcharge and any other
11 payments of power costs through application of trans-
12 mission revenues to power costs shall be treated as loans
13 to the Bonneville Power Administration's power function
14 by the transmission function. The Bonneville Power Ad-
15 ministration shall repay the loans as soon as possible from
16 power revenues once the Bonneville Power Administration
17 is able to meet other power cost recovery and Treasury
18 repayment obligations on an annual basis using power rev-
19 enues, and to the extent practicable, refund revenues col-
20 lected by application of the surcharge to all transmission
21 customers charged the surcharge, as directed and deter-
22 mined appropriate by the Commission. The borrowed reve-
23 nues shall bear interest at a rate determined appropriate
24 by the Commission.

1 (f) COST RECOVERY.—For the recovery of costs re-
2 lating to any generation or conservation resources fi-
3 nanced by debt issued by a non-Federal party before Octo-
4 ber 1, 1998 (and any refundings and refinancing thereof),
5 and secured by an obligation of the Bonneville Power Ad-
6 ministration to make payments or net bill power and
7 transmission service that cannot be recovered through
8 power rates and charges and paid in accordance with the
9 application of revenues and priority of payments specified
10 by section 13(b) of the Federal Columbia River Trans-
11 mission System Act of 1974 (16 U.S.C. 838k(b)), the pro-
12 visions of this section apply, except for the recovery limita-
13 tions under subsection (b)(1) and the time limits under
14 subsection (b)(2), but only to the extent such recovery
15 would have been allowed under laws applicable to the Bon-
16 neville Power Administration as of October 1, 1998.

17 **SEC. 624. LIMIT ON RETAIL SALES BY BONNEVILLE POWER**
18 **ADMINISTRATION.**

19 Notwithstanding section 5(a) of the Bonneville
20 Project Act (16 U.S.C. 832d(a)), the Bonneville Power
21 Administration shall not sell electric energy or capacity to
22 any retail electric consumer that did not have a contract
23 for the purchase of electric energy from the Bonneville
24 Power Administration for use at specific facilities on Octo-
25 ber 1, 1998.

1 **SEC. 625. LIMITATION ON ACQUISITION OF NEW MAJOR**
2 **GENERATING RESOURCES.**

3 Section 6 of the Pacific Northwest Electric Power
4 Planning and Conservation Act (16 U.S.C. 839d) is
5 amended by adding the following new subsection at the
6 end thereof:

7 “(n) LIMITATION ON ACQUISITION OF NEW MAJOR
8 GENERATING RESOURCES.—Notwithstanding any other
9 provision of law, the Administrator shall not acquire any
10 new major resource after the date of enactment of this
11 subsection unless the Commission determines that satis-
12 factory contractual and other financial arrangements have
13 been made to ensure that the customer or customers on
14 whose behalf the resource is acquired commit to pay the
15 full costs of the resource and the Administrator shall not
16 acquire any new major resource that the Administrator
17 reasonably expects will necessitate the use of his authority
18 to recover otherwise nonrecoverable costs provided in sec-
19 tion 623 of the Electricity Competition and Reliability
20 Act.”.

21 **SEC. 626. APPLICATION OF ANTITRUST LAW.**

22 (a) IN GENERAL.—The Bonneville Power Adminis-
23 tration shall be subject to the antitrust laws of the United
24 States with respect to its sale of electric energy and capac-
25 ity and the operation of its transmission system. For pur-
26 poses of this section, the term “antitrust laws” has the

1 meaning given such term in subsection (a) of the first sec-
2 tion of the Clayton Act (15 U.S.C. 12(a)), except that
3 such term includes section 5 of the Federal Trade Com-
4 mission Act (15 U.S.C. 45) to the extent that such section
5 5 applies to unfair methods of competition.

6 (b) DAMAGES.—No damages, interest on damages,
7 costs, or attorney’s fees may be recovered under section
8 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
9 15c) from the Bonneville Power Administration.

10 **SEC. 627. CONFORMING AMENDMENTS.**

11 (a) FEDERAL POWER ACT.—Section 212(i) of the
12 Federal Power Act (16 U.S.C. 824(i)) is repealed.

13 (b) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-
14 TEM ACT.—(1) Section 3(c) of the Federal Columbia
15 River Transmission System Act (16 U.S.C. 838a) is
16 amended by inserting “, and transmission facilities with
17 an estimated capital cost exceeding \$50,000,000 in 1998
18 dollars, adjusted using the United States Gross Domestic
19 Product Implicit Price Deflator Index”, after “own facili-
20 ties”.

21 (2) Section 6 of the Federal Columbia River Trans-
22 mission System Act (16 U.S.C. 838d) is repealed.

23 (3) Section 9 of the Federal Columbia River Trans-
24 mission System Act (16 U.S.C. 838g) is amended to read
25 as follows:

1 **“SEC. 9. RATES AND CHARGES.**

2 “Schedules of rates and charges for the sale, includ-
3 ing dispositions to Federal agencies, of all electric power
4 made available to the Administrator pursuant to section
5 8 of this Act or otherwise acquired shall be established—

6 “(1) with a view to encouraging the widest pos-
7 sible diversified use of electric power at the lowest
8 possible rates to consumers consistent with sound
9 business principles;

10 “(2) having regard to the recovery (upon the
11 basis of the application of such rate schedules to the
12 capacity of the electric facilities of the projects) of
13 the cost of producing such electric power, including
14 the amortization of the capital investment allocated
15 to power over a reasonable period of years and pay-
16 ments provided for in section 11(b)(9) of this Act;
17 and

18 “(3) at levels to produce such additional power
19 revenues as may be required, in the aggregate with
20 all other power revenues of the Administrator, to
21 pay when due the principal of, premiums, discounts,
22 and expenses in connection with the issuance of and
23 interest on all bonds issued and outstanding pursu-
24 ant to this Act for other than the construction, ac-
25 quisition, and replacement of the Federal trans-
26 mission system, and amounts required to establish

1 and maintain reserve and other funds and accounts
2 established in connection therewith.

3 Electric power rates under this section shall be established
4 by the Administrator in accordance with section 7 of the
5 Pacific Northwest Electric Power Planning and Conserva-
6 tion Act.”.

7 (4) Section 10 of the Federal Columbia River Trans-
8 mission System Act (16 U.S.C. 838h) is repealed.

9 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
10 lic Law 88–552 (16 U.S.C. 837e), commonly known as
11 the “Regional Preference Act”, is amended by striking
12 “Federal energy or” in the first sentence and by striking
13 the second sentence.

14 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
15 of the Pacific Northwest Electric Power Planning and
16 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
17 read as follows:

18 “(a)(1) The Administrator shall establish, and peri-
19 odically review and revise, rates for the sale and disposi-
20 tion of electric power and shall periodically review and,
21 if necessary, propose revisions to rates for the trans-
22 mission of electric power. Rates for the sale and disposi-
23 tion of electric power shall be established and, as appro-
24 priate, revised to recover, in accordance with sound busi-
25 ness principles, the costs associated with the acquisition

1 and conservation of electric power, including the amortiza-
2 tion of the Federal investment allocable to electric power
3 rates in the Federal Columbia River Power System (in-
4 cluding irrigation electric power-related costs required to
5 be repaid out of electric power revenues) over a reasonable
6 period of years and the other costs and expenses incurred
7 by the Administrator pursuant to this Act and other provi-
8 sions of law. Rates for the sale and disposition of electric
9 power shall be established in accordance with section 9
10 of the Federal Columbia River Transmission System Act
11 (16 U.S.C. 838g), section 5 of the Flood Control Act of
12 1944 (16 U.S.C. 825s), and this Act.”.

13 (2) Section 7(a)(2) of the Pacific Northwest Electric
14 Power Planning and Conservation Act (16 U.S.C.
15 839e(a)(2)) is amended—

16 (A) by striking “Rates” and inserting “Power
17 rates”;

18 (B) by inserting “and” after the comma in sub-
19 paragraph (A);

20 (C) by striking “, and” and inserting a period
21 at the end of subparagraph (B); and

22 (D) by striking subparagraph (C).

23 (3) Section 7(i) of the Pacific Northwest Electric
24 Power Planning and Conservation Act (16 U.S.C. 839e(i))

1 is amended by inserting “power” after “establishing” in
2 the first sentence.

3 (4) Section 9(d) of the Pacific Northwest Electric
4 Power Planning and Conservation Act (16 U.S.C.
5 839f(d)) is amended by striking “transmission access,”
6 and inserting “power” before “services” in the second sen-
7 tence.

8 (5) Section 9(i)(3) of the Pacific Northwest Electric
9 Power Planning and Conservation Act (16 U.S.C.
10 839f(i)(3)) is amended by inserting “power” before “serv-
11 ices” each place it appears, and by striking “trans-
12 mission,” in the first sentence.

13 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
14 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
15 by striking the colon and all that follows and inserting
16 a period.

17 **Subtitle C—Other Power**
18 **Marketing Administrations**

19 **SEC. 631. DEFINITIONS.**

20 For purposes of this subtitle:

21 (1) The term “Administrator” means the ad-
22 ministrator of a Federal power marketing adminis-
23 tration.

24 (2) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (3) The term “Federal power marketing admin-
2 istrations” means the Western Area Power Adminis-
3 tration, Southwestern Power Administration, and
4 Southeastern Power Administration.

5 (4) The term “power generating agencies”
6 means the Bureau of Reclamation, the Army Corps
7 of Engineers, and the International Boundary and
8 Water Commission.

9 (5) The term “public utility” means a public
10 utility as defined in section 201(e)(1) the Federal
11 Power Act.

12 **SEC. 632. WHOLESALE POWER SALES BY FEDERAL POWER**
13 **MARKETING ADMINISTRATIONS.**

14 (a) RATES, TERMS, AND CONDITIONS.—(1) All rates
15 and charges made, demanded, or received for the sale of
16 electric energy and capacity by each Federal power mar-
17 keting administration to its electric energy customers shall
18 be the lowest possible rates and charges that will recover
19 from such customers over a reasonable period of years,
20 in accordance with sound business principles, all costs in-
21 curred by the United States for the production of electric
22 energy sold by such Federal power marketing administra-
23 tion, including repayment of the capital investment allo-
24 cated to power and costs assigned by Acts of Congress

1 to power for repayment within the period of cost recovery
2 permitted by law.

3 (2) The Commission may modify proposed rates sub-
4 mitted by any Federal power marketing administration
5 and establish terms and conditions consistent with this
6 subsection. In its determination of rates, terms, and condi-
7 tions for the sale of electric energy and capacity by the
8 Federal power marketing administrations the Commission
9 shall not review policy judgments and interpretations of
10 laws and regulations made by the power generating agen-
11 cies.

12 (b) EXISTING RATES.—All rates, terms, and condi-
13 tions for the sale of electric energy and capacity by the
14 Federal power marketing administrations placed into ef-
15 fect on a final basis pursuant to any authority prior to
16 the date of enactment of this Act shall remain in full force
17 and effect unless the Commission determines, after a hear-
18 ing held upon its own motion or upon complaint, that the
19 rates, terms, and conditions are inconsistent with sub-
20 section (a)(1) and establishes new rates, terms, and condi-
21 tions.

22 (c) PERIODIC REVIEW.—The Administrators shall
23 periodically review the rates and charges made, demanded,
24 or received by each Federal power marketing administra-
25 tion for the sale of electric energy and capacity. In the

1 event the rates and charges made, demanded, or received
2 by any Federal power marketing administration are incon-
3 sistent with subsection (a)(1), the Administrator of that
4 administration shall propose revised rates. Such rates
5 shall be established in accordance with this section, section
6 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
7 tion 9(c) of the Reclamation Project Act of 1939 (43
8 U.S.C. 485h(c)), and the Acts specifically applicable to in-
9 dividual projects of the power systems of the power gener-
10 ating agencies.

11 **SEC. 633. REGULATION OF FEDERAL POWER MARKETING**
12 **ADMINISTRATION TRANSMISSION SYSTEMS.**

13 Notwithstanding section 201(f) of the Federal Power
14 Act, sections 202(h), 203 (with respect to dispositions of
15 transmission facilities), 205, 206, 208, and 210 through
16 213 and sections 301 through 304, 306, 307 (except the
17 last sentence of paragraph (c)), 308, 309, 313, and 317
18 of the Federal Power Act apply to the transmission of elec-
19 tric energy by the Federal power marketing administra-
20 tions to the same extent and in the same manner as such
21 provisions apply to the transmission of electric energy by
22 a public utility otherwise subject to the jurisdiction of the
23 Commission under part II of such Act.

1 **SEC. 634. ACCOUNTING.**

2 Not later than six months after the date of enactment
3 of this Act, the Commission shall promulgate rules con-
4 taining each of the following:

5 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
6 MENTS.—Procedures to ensure that the Federal
7 power marketing administrations utilize the same
8 accounting principles and requirements as are appli-
9 cable to public utilities pursuant to parts II and III
10 of the Federal Power Act (16 U.S.C. 792 and fol-
11 lowing) with respect to accounting for revenue, ex-
12 penses, investments, and depreciation.

13 (2) COMPLIANCE.—Procedures for the filing of
14 complaints with the Commission by interested per-
15 sons seeking to ensure compliance with the proce-
16 dures of this section.

17 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
18 dures to ensure that the power generating agencies
19 and the Administrators maintain a consistent set of
20 books and records for purposes of repayment obliga-
21 tions.

22 **SEC. 635. APPLICATION OF ANTITRUST LAW.**

23 (a) IN GENERAL.—Each Federal power marketing
24 administration shall be subject to the antitrust laws of the
25 United States with respect to its sale of electric energy
26 and capacity and the operation of its transmission system.

1 For purposes of this section, the term “antitrust laws”
2 has the meaning given such term in subsection (a) of the
3 first section of the Clayton Act (15 U.S.C. 12(a)), except
4 that such term includes section 5 of the Federal Trade
5 Commission Act (15 U.S.C. 45) to the extent that such
6 section 5 applies to unfair methods of competition.

7 (b) DAMAGES.—No damages, interest on damages,
8 costs, or attorney’s fees may be recovered under section
9 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
10 15c) from a Federal power marketing administration.

11 **TITLE VII—ENVIRONMENTAL** 12 **PROVISIONS**

13 **SEC. 701. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

14 Section 1212 of the Energy Policy Act of 1992 is
15 amended to read as follows:

16 **“SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

17 “(a) INCENTIVE PAYMENTS.—For electric energy
18 generated and sold by a qualified renewable energy facility
19 during the incentive period, the Secretary of Energy (re-
20 ferred to in this section as the ‘Secretary’) shall make,
21 subject to the availability of appropriations, incentive pay-
22 ments to the owner or operator of such facility. The
23 amount of such payment made to any such owner or oper-
24 ator shall be as determined under subsection (e) of this
25 section. Payments under this section may only be made

1 upon receipt by the Secretary of an incentive payment ap-
2 plication which establishes that the applicant is eligible to
3 receive such payment and which satisfies such other re-
4 quirements as the Secretary deems necessary. Such appli-
5 cation shall be in such form, and shall be submitted at
6 such time, as the Secretary shall establish.

7 “(b) QUALIFIED RENEWABLE ENERGY FACILITY.—
8 For purposes of this section, a ‘qualified renewable energy
9 facility’ is a facility which generates electric energy for
10 sale solely by the use of solar energy, wind, biomass, or
11 geothermal.

12 “(c) ELIGIBILITY WINDOW.—Payments may be made
13 under this section only for electric energy generated from
14 a qualified renewable energy facility first used during the
15 period of 10 fiscal years beginning with the first full fiscal
16 year occurring after the date of enactment of this Act.

17 “(d) INCENTIVE PERIOD.—A qualified renewable en-
18 ergy facility may receive payments under this section for
19 a period of 10 fiscal years (referred to in this section as
20 the ‘incentive period’). Such period shall begin with the
21 fiscal year in which electric energy generated from the fa-
22 cility is first eligible for such payments.

23 “(e) AMOUNT OF PAYMENT.—

24 “(1) IN GENERAL.—Payments made by the
25 Secretary under this section to the owner or opera-

1 tor of a qualified renewable energy facility shall be
2 based on the number of kilowatt hours of electric en-
3 ergy generated by the facility through the use of
4 solar, wind, biomass, or geothermal energy during
5 the incentive period. For any facility, the amount of
6 such payment shall be 1.5 cents per kilowatt hour,
7 adjusted as provided in paragraph (2).

8 “(2) ADJUSTMENTS.—The amount of the pay-
9 ment made to any person under this subsection as
10 provided in paragraph (1) shall be adjusted for infla-
11 tion for each fiscal year beginning after calendar
12 year 1999 in the same manner as provided in the
13 provisions of section 29(d)(2)(B) of the Internal
14 Revenue Code of 1986, except that in applying such
15 provisions the calendar year 1999 shall be sub-
16 stituted for calendar year 1979.

17 “(f) SUNSET.—No payment may be made under this
18 section to any qualified renewable energy facility after the
19 expiration of the period of 20 fiscal years beginning with
20 the first full fiscal year occurring after the date of enact-
21 ment of this Act, and no payment made be made under
22 this section to any such facility after a payment has been
23 made with respect to such facility for a period of 10 fiscal
24 years.

1 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary to carry
3 out the purposes of this section \$50,000,000 for each of
4 the fiscal years 2000 through 2004.”.

5 **SEC. 702. NET METERING.**

6 (a) DEFINITIONS.—For purposes of this section:

7 (1) The term “eligible on-site generating facil-
8 ity” means a facility on the site of an electric con-
9 sumer with a peak generating capacity of 20 kilo-
10 watts or less that is fueled solely by solar energy,
11 wind, geothermal, or biomass.

12 (2) The term “net metering service” means
13 service to an electric consumer under which elec-
14 tricity generated by that consumer from an eligible
15 on-site generating facility and delivered to the dis-
16 tribution system through the same meter through
17 which purchased electricity is received may be used
18 to offset electricity provided by the retail electric
19 supplier to the electric consumer during the applica-
20 ble billing period so that an electric consumer is
21 billed only for the net electricity consumed during
22 the billing period, but in no event shall the net be
23 less than zero during the applicable billing period.

1 (3) The term “retail electric supplier” has the
2 meaning given such term in section 3 of the Federal
3 Power Act.

4 (b) REQUIREMENT TO PROVIDE NET METERING
5 SERVICE.—Each retail electric supplier shall make avail-
6 able upon request net metering service to any retail elec-
7 tric consumer that the supplier currently serves or solicits
8 for service.

9 (c) STATE AUTHORITY.—This section does not pre-
10 clude a State from imposing additional requirements con-
11 sistent with the requirements in this section, including the
12 imposition of a cap limiting the amount of net metering
13 available in the State. Nothing in this Act or any other
14 Federal law preempts or otherwise affects authority under
15 State law to require a retail electric supplier to make avail-
16 able net metering service to a retail electric consumer
17 which the supplier serves or offers to serve.

18 **TITLE VIII—PROVISIONS RELAT-**
19 **ING TO INTERNAL REVENUE**
20 **CODE**

21 **SEC. 801. BUSINESS ACTIVITIES OF MUTUAL OR COOPERA-**
22 **TIVE ELECTRIC COMPANIES.**

23 Section 501(c)(12) of the Internal Revenue Code of
24 1986 is amended—

25 (1) in subparagraph (C)—

1 (A) in clause (i), by striking “or” at the
2 end;

3 (B) in clause (ii), by striking the period
4 and inserting a comma; and

5 (C) by adding at the end the following
6 clauses:

7 “(iii) from the prepayment of a loan under
8 section 306B of the Rural Electrification Act of
9 1936 (including amendments made after Janu-
10 ary 1, 1987), or

11 “(iv) from revenues received from non-
12 members for qualified open access activities.”;
13 and

14 (2) by adding at the end the following subpara-
15 graph:

16 “(E) For purposes of this paragraph, the term
17 ‘qualified open access activities’, with respect to a
18 mutual or cooperative electric company, means any
19 of the following activities:

20 “(i) Providing open access transmission
21 services and ancillary services that meet the
22 reciprocity requirements of Federal Energy
23 Regulatory Commission Order No. 888, that
24 are ordered by the Commission, or that are pro-
25 vided in accordance with a transmission tariff

1 of a regional transmission organization ap-
2 proved by the Commission.

3 “(ii) Delivery on an open access basis of
4 electric energy sold by other retail electric sup-
5 pliers to retail electric consumers served by
6 local distribution facilities owned, controlled, or
7 operated by the company.

8 “(iii) The sale of electric energy to non-
9 members, if the company provides open access
10 to the transmission and local distribution facili-
11 ties it owns, controls, or operates.

12 “(iv) Sales of generation, distribution, or
13 transmission facilities.”.

14 **SEC. 802. TAX-EXEMPT BOND FINANCING OF CERTAIN**
15 **ELECTRIC FACILITIES.**

16 (a) PERMITTED OPEN ACCESS TRANSACTIONS NOT
17 A PRIVATE BUSINESS USE.—Section 141(b)(6) of the In-
18 ternal Revenue Code of 1986 (defining private business
19 use) is amended by adding at the end the following:

20 “(C) PERMITTED OPEN ACCESS TRANS-
21 ACTIONS NOT A PRIVATE BUSINESS USE.—

22 “(i) IN GENERAL.—For purposes of
23 this subsection, the term ‘private business
24 use’ shall not include a permitted open ac-
25 cess transaction.

1 “(ii) PERMITTED OPEN ACCESS
2 TRANSACTION DEFINED.—For purposes of
3 clause (i), the term ‘permitted open access
4 transaction’ means any of the following
5 transactions or activities with respect to an
6 electric output facility (as defined in sub-
7 section (f)(4)(A)) owned by a governmental
8 unit:

9 “(I) Providing open access trans-
10 mission services and ancillary services
11 that meet the reciprocity requirements
12 of Federal Energy Regulatory Com-
13 mission Order No. 888, or that are
14 ordered by the Federal Energy Regu-
15 latory Commission, or that are pro-
16 vided in accordance with a trans-
17 mission tariff of an independent sys-
18 tem operator approved by such Com-
19 mission, or that are consistent with
20 State-administered laws, rules, or or-
21 ders providing for open transmission
22 access.

23 “(II) Participation in an inde-
24 pendent system operator agreement
25 (which may include transferring con-

1 trol of transmission facilities to an
2 independent system operator), in a re-
3 gional transmission group, or in a
4 power exchange agreement approved
5 by such Commission.

6 “(III) Delivery on an open access
7 basis of electric energy sold by other
8 entities to end-users served by such
9 governmental unit’s distribution facili-
10 ties.

11 “(IV) If open access service is
12 provided under subelause (I) or (III),
13 the sale of electric output of electric
14 output facilities on terms other than
15 those available to the general public if
16 such sale is to an on-system purchaser
17 or is an existing off-system sale.

18 “(V) Such other transactions or
19 activities as may be provided in regu-
20 lations prescribed by the Secretary.

21 “(iii) DEFINITIONS; SPECIAL
22 RULES.—For purposes of this
23 subparagraph—

24 “(I) ON-SYSTEM PURCHASER.—
25 The term ‘on-system purchaser’

1 means a person who purchases electric
2 energy from a governmental unit and
3 whose electric facilities or equipment
4 are directly connected with trans-
5 mission or distribution facilities that
6 are owned by such governmental unit.

7 “(II) OFF-SYSTEM PUR-
8 CHASER.—The term ‘off-system pur-
9 chaser’ means a purchaser of electric
10 energy from a governmental unit
11 other than an on-system purchaser.

12 “(III) EXISTING OFF-SYSTEM
13 SALE.—The term ‘existing off-system
14 sale’ means a sale of electric energy to
15 a person that was an off-system pur-
16 chaser of electric energy in the base
17 year, but not in excess of the kilowatt
18 hours purchased by such person in
19 such year.

20 “(IV) BASE YEAR.—The term
21 ‘base year’ means 1998 (or, at the
22 election of such unit, 1996 or 1997).

23 “(V) JOINT ACTION AGENCIES.—
24 A member of a joint action agency
25 that is entitled to make a sale de-

1 scribed in clause (ii)(IV) in a year
2 may transfer that entitlement to the
3 joint action agency in accordance with
4 rules of the Secretary.

5 “(VI) GOVERNMENT-OWNED FA-
6 CILITY.—An electric output facility
7 (as defined in subsection (f)(4)(A))
8 shall be treated as owned by a govern-
9 mental unit if it is owned or leased by
10 such governmental unit or if such gov-
11 ernmental unit has capacity rights
12 therein acquired before July 9, 1996,
13 for the purposes of serving one or
14 more customers to which such govern-
15 mental unit had a service obligation
16 on such date under State law or a re-
17 quirements contract.”.

18 (b) ELECTION TO TERMINATE TAX-EXEMPT FI-
19 NANCING.—Section 141 of the Internal Revenue Code of
20 1986 (relating to private activity bond; qualified bond) is
21 amended by adding at the end the following:

22 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
23 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
24 TIES.—

1 “(1) IN GENERAL.—An issuer may make an ir-
2 revocable election under this paragraph to terminate
3 certain tax-exempt financing for electric output fa-
4 cilities. If the issuer makes such election, then—

5 “(A) except as provided in paragraph (2),
6 no bond the interest on which is exempt from
7 tax under section 103 may be issued on or after
8 the date of such election with respect to an elec-
9 tric output facility; and

10 “(B) notwithstanding paragraph (1) or (2)
11 of subsection (a) or paragraph (5) of subsection
12 (b), with respect to an electric output facility no
13 bond that was issued before the date of enact-
14 ment of this subsection, the interest on which
15 was exempt from tax on such date, shall be
16 treated as a private activity bond, for so long
17 as such facility continues to be owned by a gov-
18 ernmental unit.

19 “(2) EXCEPTIONS.—An election under para-
20 graph (1) does not apply to—

21 “(A) any qualified bond (as defined in sub-
22 section (e)),

23 “(B) any eligible refunding bond,

24 “(C) any bond issued to finance a qualify-
25 ing T&D facility, or

1 “(D) any bond issued to finance equipment
2 necessary to meet Federal or State environ-
3 mental requirements applicable to, or repair of,
4 electric output facilities in service on the date
5 of enactment of this subsection. Repairs or
6 equipment may not increase by more than a de-
7 minimis degree the capacity of the facility be-
8 yond its original design.

9 “(3) FORM AND EFFECT OF ELECTIONS.—An
10 election under paragraph (1) shall be made in such
11 a manner as the Secretary prescribes and shall be
12 binding on any successor in interest to the electing
13 issuer.

14 “(4) DEFINITIONS.—For purposes of this
15 subsection—

16 “(A) ELECTRIC OUTPUT FACILITY.—The
17 term ‘electric output facility’ means an output
18 facility that is an electric generation, trans-
19 mission, or distribution facility.

20 “(B) ELIGIBLE REFUNDING BOND.—The
21 term ‘eligible refunding bond’ means State or
22 local bonds issued after an election described in
23 paragraph (1) that directly or indirectly refund
24 State or local bonds issued before such election,
25 if the weighted averaged maturity of the re-

1 funding bonds do not exceed the remaining
2 weighted average maturity of the bonds issued
3 before the election.

4 “(C) QUALIFYING T&D FACILITY.—The
5 term ‘qualifying T&D facility’ means—

6 “(i) transmission facilities over which
7 services described in subsection
8 (b)(6)(C)(ii)(I) are provided, or

9 “(ii) distribution facilities over which
10 services described in subsection
11 (b)(6)(C)(ii)(III) are provided.”.

12 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-
13 TION RULES.—

14 (1) EFFECTIVE DATE.—The amendments made
15 by this section take effect on the date of enactment
16 of this Act, except that a governmental unit may
17 elect to apply section 141(b)(6)(C) of the Internal
18 Revenue Code of 1986, as added by subsection (a),
19 with respect to permitted open access transactions
20 on or after July 9, 1996.

21 (2) APPLICABILITY.—References in this Act to
22 sections of the Internal Revenue Code of 1986 shall
23 be deemed to include references to comparable sec-
24 tions of the Internal Revenue Code of 1954.

25 (3) TRANSITION RULES.—

1 (A) PRIVATE BUSINESS USE.—Any activity
2 that was not a private business use prior to the
3 effective date of the amendment made by sub-
4 section (a) shall not be deemed to be a private
5 business use by reason of the enactment of such
6 amendment.

7 (B) ELECTION.—An issuer making the
8 election under section 141(f) of the Internal
9 Revenue Code of 1986, as added by subsection
10 (b), shall not be liable under any contract in ef-
11 fect on the date of enactment of this Act for
12 any claim arising from having made the elec-
13 tion.

14 **SEC. 803. NUCLEAR DECOMMISSIONING COSTS.**

15 (a) IN GENERAL.—Subsection (b) of section 468A of
16 the Internal Revenue Code of 1986 is amended to read
17 as follows:

18 “(b) LIMITATION ON AMOUNT PAID INTO FUND.—
19 The amount which a taxpayer may pay into the Fund for
20 any taxable year shall not exceed the ruling amount appli-
21 cable to such taxable year.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning after
24 December 31, 1999.

1 **TITLE IX—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 901. STUDY.**

4 The Secretary of Energy shall report to the Congress
5 within two years after the enactment of this Act on the
6 extent to which actions taken by the States have removed
7 regulatory and statutory barriers to interstate commerce
8 in electric energy. The report shall describe any remaining
9 barriers to interstate commerce and shall make rec-
10 ommendations to the Congress for additional action that
11 may be necessary to lower or eliminate barriers to inter-
12 state commerce in electric energy consistent with the de-
13 velopment of a fully competitive marketplace.

14 **SEC. 902. STATE TAX LAWS.**

15 Nothing in this Act or the amendments made by this
16 Act shall be construed to modify, impair, or supersede,
17 or authorize the modification, impairment, or supercession
18 of, any State or local law pertaining to taxation that is
19 otherwise consistent with Federal statutory and constitu-
20 tional law.